Supreme Court No. 200,578-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE DISCIPLINARY PROCEEDING AGAINST

FREDRIC SANAI,

Lawyer (Bar No. 32347).

ANSWERING BRIEF OF THE WASHINGTON STATE BAR ASSOCIATION

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APPENDICES

I. INTRODUCTION

This case turns on the appropriate standard of review. Respondent Fredric Sanai (Fredric)[1] asks this Court to substitute its judgment for that of the hearing officer and ignore the well-established abuse of discretion standard applicable to the four procedural rulings that he challenges. Specifically, Fredric asks this Court to (1) ignore credibility findings that resulted in denial of his motion for continuance, (2) require subpoenas for three Ninth Circuit judges, (3) allow his brother, who is not admitted to practice in this state, to represent him, and (4) require admission of his judicial corruption theory.

In eight different proceedings since 2001, Fredric has burdened his father, the courts, and others with frivolous and duplicative motions and complaints. After a dissolution decree ordered an equal distribution of his parents' community assets, Fredric began representing his mother, Viveca Sanai (Viveca), in an effort to block his father's access to dissolution proceeds. He then filed a separate partition action and sued the judicial officers who ruled against him. One judge described Fredric's efforts as the "dogged pursuit of a divorce long past."

Fredric opened another front in his war against his father by filing two state court lawsuits and three federal court lawsuits, all alleging that

[1] To avoid confusion, Sanai family members will be referred to by their first names.

his father had wiretapped conversations from the family home. A distinguished federal judge dismissed the consolidated federal wiretap litigation calling it "an indescribable abuse of the legal process."

The Washington State Bar Association (Association) filed a Formal Complaint against Fredric alleging litigation misconduct. Hearing Officer Joseph M. Mano, Jr. recommended disbarment.[2] The Disciplinary Board (Board) unanimously agreed and rejected the same four procedural challenges Fredric raises here.[3] Because Fredric fails to challenge them, the hearing officer's factual findings are verities. See In re Disciplinary Proceeding Against Whitney, 155 Wn.2d 451, 466-67, 120 P.3d 550 (2005).

Relying exclusively on matters outside the record,[4] Fredric justifies his misconduct as an attempt to expose "judicial corruption" and sees the

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[2] The Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation (FFCL) are attached as Appendix A.

[3] The Board's order is attached as Appendix B.

[4] Fredric's recitation of "facts" in his Opening Brief relies on the declaration and exhibits he submitted in response to the Association's interim suspension petition under Supreme Court No. 200,560-8. With few exceptions, those materials are not a part of the record on review. See Rule 12.5(b) of the Rules for Enforcement of Lawyer Conduct (ELC) (record on review consists of: notice of appeal, Board's decision, record before the Board, transcript of oral argument before the Board, and other portions of the record before the hearing officer that the Court deems necessary for review) and Rule 9.1(a) of the Rules of Appellate Procedure (RAP) (record on review may consist of report of proceedings, clerk's papers, exhibits and certified record of administrative adjudicative proceedings). To avoid further delay, we have not burdened the Court with a motion to strike, for the Court can discriminate what is "germane to [its] resolution of the issues..."). In re Disciplinary Proceeding Against Haley, 156 Wn.2d 324, 328 n.1, 126 P.3d 1261 (2006)

disciplinary case against him as retaliation for his efforts. See Opening Brief at 4, 20.

Fredric challenges neither the hearing officer's factual findings nor the hearing officer's conclusion that disbarment is the appropriate sanction. Instead, he asks this Court to ignore the well-established standard of review for the discretionary rulings that the hearing officer in this case was obliged to make.

II. COUNTERSTATEMENT OF THE ISSUES

1. Fredric's brother, Cyrus Sanai (Cyrus), who is not admitted to practice law in this state, violated multiple court orders or rules in this and other cases. Did the hearing officer properly exercise his discretion when he denied him pro hac vice admission?

2. Fredric sought to have three federal judges "explain their reasoning" behind an adverse opinion and an article critical of his brother. Did the hearing officer properly exercise his discretion when he denied Fredric's request to issue subpoenas to the judges?

3. In requests for admission, Fredric asked the Association to admit various components of his judicial corruption theory. Did the hearing officer properly exercise his discretion when he granted the Association's motion for a protective order as to most of the requests for admission?

4. After a two-year delay since the initial hearing date, after two prior requests for continuance, and just hours after an unsuccessful effort to enjoin his disciplinary hearing, Fredric cited a health issue to justify another delay. The hearing officer did not find Fredric's proffer credible. Did the hearing officer properly exercise his discretion when he denied Fredric's requested continuance?

III. COUNTERSTATEMENT OF THE CASE

A. PROCEDURAL FACTS

1. Stays and the First Two Requests for Continuance.

The Association filed a Formal Complaint in July 2004, and the hearing officer set a March 2005 hearing date. BF 2, 7. No hearing occurred in March 2005 because the hearing officer granted Fredric's request to stay the proceedings based on ongoing activity in the underlying litigation. BF 20, 21. The hearing officer required case status conferences about every six months, which resulted in two additional orders staying the proceedings. BF 22, 23. Then, in March 2006, the hearing officer entered an order setting an October 16, 2006 hearing date. BF 24. In April 2006, the Association filed an amended complaint. BF 26.[5]

Meanwhile, in November 2004, the hearing officer had granted a motion allowing Fredric's brother, Cyrus, to be admitted pro hac vice in

[5] The amended complaint added developments in the underlying litigation since the initial complaint was filed almost two years earlier.

association with Fredric's "local" counsel, J. Lee Street (Street). BF 18. In August 2006, Cyrus moved to continue the hearing because his "primary occupation" made an October 2006 hearing "impossible." He also sought to extend the discovery cut-off. BF 32. In fact, Fredric had not conducted any discovery. BF 34 (Eide Declaration). By order filed September 11, 2006, the hearing officer denied the requested continuance "for the reasons articulated in [the Association's written opposition]." BF 33, 37.

Fredric then sought interim review under ELC 10.9. BF 38. Given the Board's schedule, referral to the full Board effectively would have canceled the October 2006 hearing date. BF 40 (Second Eide Declaration). The Board chair determined that under ELC 10.9 review by the full Board was "not necessary or appropriate," and on September 25, 2006, she denied the request. BF 43.

Just one week later, Street moved to withdraw as Fredric's counsel citing a health issue and demands on his time due to personnel changes in his office. He wrote: "This case is unique (primarily given the personal nature of my relationship with Respondent Sanai), as is the physical stress that will be placed on my eyes/body during a multiple week trial...." He sought "a brief continuance." BF 47. At the Association's request, the parties conferred with the hearing officer on October 2, 2006. The

Association offered some proposals to allow the hearing to continue as scheduled, but Fredric rejected them. TR (10/2/06). The hearing officer allowed Street to withdraw, but expressed his concern about the delay:

> Well, I'm going to grant the motion to allow him to withdraw, and that's going to necessitate a change of the date. I don't like to do this. I made a decision to not continue this case initially, and I think that decision was well made and had good grounds for it.
>
> ...
>
> ...I think Mr. Sanai – or excuse me, Mr. Street has presented sufficient facts – and they're unrebutted – as to his medical condition here, and that he's not going to be able to participate.

TR (10/2/06) at 24-25.

The hearing officer's October 3, 2006 order allowed Street to withdraw, set an October 27, 2006 conference to reschedule the hearing, vacated Cyrus's pro hac vice admission effective October 9, 2006, and required Cyrus to provide exhibits to the Association by that date. BF 49. By order filed November 1, 2006, the hearing officer set an April 16, 2007 hearing date. BF 53.

2. The Second Pro Hac Vice Admission Request and the Rulings on Fredric's Requested Discovery.

In January 2007, Cyrus applied for admission pro hac vice again, this time in association with Fredric as local counsel. BF 63. The hearing officer denied the request based on Cyrus's misbehavior in this and other

cases since his first pro hac vice admission request. BF 79.[6]

Also in January 2007, Fredric served 72 Requests for Admission. BF 57. The Association sought and obtained a protective order as to most of the requests, and responded to the rest. BF 59, 60, 81. In February 2007, Fredric moved for an order allowing him to depose federal judges. BF 68. The hearing officer denied that motion. BF 80. Fredric appeals the hearing officer's discretionary decisions on these three motions.

3. Fredric Seeks to Move, Enjoin, or Continue the Hearing and Fails to Comply with Scheduling Order Deadlines.

On February 26, 2007, Fredric moved to relocate his disciplinary hearing to Oregon "because it is extremely inconvenient for me to travel to Seattle for a two-week hearing, and financially ruinous for me to be forced to miss work (and thus miss salary) as well as pay for two weeks in a Seattle hotel." BF 83. Fredric wanted to "be able to stay in [his] own apartment and perform some of the more urgent tasks required in [his] job." Id. The Association opposed the motion, BF 84, 85, and by order filed on March 9, 2006, the hearing officer denied it. BF 86.

The November 1, 2006 scheduling order, which set the April 16, 2007 hearing date, BF 53, also set discovery and other prehearing deadlines. For example, objections to proposed exhibits had to be

[6] Later, Fredric would attribute his increased blood pressure to the hearing officer's denial of Cyrus's request for admission pro hac vice. TR 242.

exchanged by March 16, 2007, and the hearing brief had to be filed by April 6, 2007. Fredric never provided objections or a brief. TR 8, 11.

On April 6, 2007, the hearing officer convened a pretrial conference. He specifically asked the parties if there was any reason why the hearing could not go forward in ten days as scheduled. Fredric did not state any concerns about his health or any other reason why the hearing could not proceed as scheduled. TR 9, 237.

Also, in 2007, Fredric had sued the hearing officer and the Association in federal district court in Oregon in an attempt to enjoin the pending disciplinary proceeding. TR 9. On Thursday, April 12, 2007, the Honorable Michael W. Mosman dismissed the suit. Fredric, represented by Cyrus, was present by telephone when Judge Mosman issued his oral decision. Id. At 10:22 a.m. on Friday, April 13, 2007, the last business day before the disciplinary hearing, Judge Mosman denied Fredric's request to enjoin the disciplinary proceeding pending Fredric's appeal to the Ninth Circuit. TR 9-10.

At 3:11 p.m. on the same day, Fredric sent a facsimile to the hearing officer requesting a continuance "due to serious medical reasons (physician's note above)." BF 90. That afternoon, by letter-ruling sent via facsimile to Fredric and to disciplinary counsel, the hearing officer denied this third request for a continuance because the accompanying

prescription pad note was "virtually unreadable" and because it lacked specificity. BF 91, 92, 93. Fredric made no attempt to contact the hearing officer, disciplinary counsel, or anyone else before the Monday, April 13, 2007 hearing date to determine whether his request for a continuance had been granted or even received.

On Monday, April 16, 2007, when the hearing convened, Fredric simply failed to appear, either in person or by telephone. TR 4. The hearing officer and disciplinary counsel attempted to decipher the physician's note. Disciplinary counsel also made a statement for the record outlining the procedural history discussed above. TR 8-10. The Association gave an opening statement and called its first witness.

Late in the afternoon on the first day of the hearing, the hearing officer notified the Association that his office had received a second facsimile from Fredric. TR 224. Because the Association had not received the facsimile, the hearing officer delivered copies. TR 225. He also advised the Association that he had arranged for Fredric to appear by telephone at 9:00 a.m. the following day. TR 226.

The second facsimile included a letter that stated in full as follows:

> On Friday 4/13 I faxed you both a note from my physician stating I was unable to participate in the 4/16 hearing due to medical reasons, and requesting a continuance. I have not heard back from you. Today I obtained a signed declaration from my physician explaining

> the situation in more detail, as well as my declaration. Please review these and let me know your position on a continuance.

BF 94 (emphasis added). Even though Fredric claimed he had not received the hearing officer's order denying his request for delay based on a "virtually unreadable" doctor's note, Fredric's second facsimile included typed statements from the doctor and himself. Id.

On the morning of Tuesday, April 17, 2007, Fredric testified by telephone and under oath as follows:

- In mid-March 2007, he suffered a headache. TR 232
- On March 27, 2007, he saw a physician. TR 233.
- On April 2, 2007, he saw his own doctor, but could not recall his blood pressure except that "it was high." TR 235.
- On April 6, 2007, he participated in the pretrial conference for this case, but did not disclose any possible medical problems. TR 237.
- On April 13, 2007, he saw his own doctor, but could not recall his blood pressure. TR 236.
- He first informed the hearing officer about this problem by the facsimile sent after 3:00 p.m. on April 13, 2007. TR 237.
- He swore he had not received the hearing officer's April 13, 2007 facsimile denying his latest request for delay. TR 238.
- He admitted that he had drafted the physician's statement faxed to the hearing officer on April 16, 2007. TR 232.
- He did not know why the physician did not use his letterhead for the statement. TR 232.

- He was "sure that there's a causal or linked relationship between having to go through this hearing without counsel of my choice [Cyrus] and represent myself and the manifestation of my massively increased blood pressure." TR 242 (emphasis added).

The hearing officer declined to continue the hearing and issued the following oral ruling:

> All right. I'm going to deny the request for the continuance based upon the information that I have in front of me. The letter from Dr. McDonough and the communication from Mr. Sanai frankly does not have the ring of truth, in my judgment. There is no indication in that letter as to what the blood pressure is, and as I understand it, and as Mr. Sanai has indicated, the major symptom of hypertension is high blood pressure. I find it inconceivable that Mr. Sanai would not remember the blood pressure that was taken twice from him on Friday, April 13th in order to be able to testify as to what that is here today.
>
> The only thing that I have is a letter that purports to be from Dr. McDonough. It's not on a letterhead, with a rather strange certification saying, "I declare under penalty of perjury under the law of the United States that all matters of facts stated in the foregoing are true and correct." That's not a certification that I'm familiar with and certainly different from the one that is normally used in the state of Washington.
>
> The letter does not indicate what symptoms are present. The letter does not, as I indicated, say what the blood pressure is. There is no indication as to what medications were prescribed or when the medications were prescribed. Assumedly medications were – If, in fact, there was a visit to the doctor, Dr. Meeker, back on March 27th there were medications prescribed at that time.
>
> It also strikes me as incredible that this would not have been mentioned at the pretrial hearing on April 6. I specifically asked both parties whether or not there was any

reason that this hearing could not go forward, and Mr. Sanai did not mention anything about a medical condition or any kind of problem that he had which would prevent this case from being heard.

So for those reasons I am not convinced by a preponderance of the evidence that this case should be continued at this time.

TR 246-47. After the morning recess, the hearing officer added:

...One of the other reasons that I denied this continuance – and I did not mention it because it was not in my notes right in front of me – was the fact that I believe that there has been a concerted effort to delay and keep this hearing from happening.

And as has been earlier mentioned on the record, a lawsuit was filed against me by Mr. Sanai, Mr. Fredric Sanai, me, Chief Justice Gerry Alexander, and the Washington State Bar Association, attempting to restrain the hearing from being held and a preliminary injunction requested to prevent the hearing from being held, and this was filed in the United States District Court, District of Oregon. And that order dismissing, a Final Judgment of Dismissal was entered on April 13, 2007, hours prior to the communication that I received from Mr. Sanai indicating that he had requested a continuance.

Based upon the relatively long history of intransigence here, I'm convinced that with that avenue having been forestalled, except with the possible appeal to the United States Court of Appeals for the Ninth Circuit, which apparently has now occurred, that that avenue was closed to Mr. Sanai, and that he then sought a further avenue to continue the case, which should have been mentioned at the pretrial hearing that we held back on April 6.

TR 278-79. Fredric appeals this ruling.

Except for his brief appearance by telephone on the second day of hearing, the hearing proceeded without Fredric. See ELC 10.13(b). The hearing concluded on Wednesday, April 18, 2007. TR 530.[8]

4. The Hearing Officer Finds Misconduct and Recommends Disbarment. The Board Unanimously Agrees and Rejects the Same Four Procedural Challenges Raised Here.

On July 19, 2007, the hearing officer filed the FFCL and recommended disbarment. BF 104. He concluded that Fredric violated multiple Rules of Professional Conduct (RPC) including RPC 3.1 (frivolous filings), RPC 3.2 (delaying litigation), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 4.4 (embarrassing, delaying, or burdening a third person), RPC 8.4(d) (conduct prejudicial to the administration of justice), RPC 8.4(j) (willfully disobeying a court order), RPC 8.4(*l*) (violating a duty under the ELC) and RPC 8.4(n) (conduct demonstrating unfitness to practice law).[9]

For the RPC 3.1, 3.2, 3.4, and 4.4 violations, the hearing officer

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[8] Several days after the hearing concluded, thus making any request for continuance moot, Fredric obtained a third doctor's statement, BF 97, and asked the hearing officer to reconsider his earlier ruling. The record does not reflect whether the hearing officer ever received this request, and Fredric has not assigned error to the hearing officer's failure to grant it.

[9] The cited rules are attached as Appendix C. These rules were not significantly affected by the September 1, 2006 amendments to the RPC.

applied Standard 6.2 of the American Bar Association's Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards). For the RPC 8.4(a), 8.4(d), 8.4(j), 8.4(*l*), and 8.4(n) violations, he applied ABA Standard 7.0.[10] Because the hearing officer found that Fredric acted intentionally and that he caused serious or potentially serious injury as to all nine counts of the Amended Formal Complaint, he determined that the presumptive sanction for each count is disbarment.

The hearing officer found no mitigating factors. FFCL ¶ 192. He found five aggravating factors: a prior disciplinary offense (2002 Oregon admonition, EX 298); dishonest or selfish motive; a pattern of misconduct; multiple offenses; and refusal to acknowledge the wrongful nature of the conduct. FFCL ¶ 193.

Fredric filed a timely notice of appeal. He twice asked the Board chair to allow his brother, Cyrus, to represent him before the Board. Those requests were denied. Before the Board, Fredric raised the same four procedural challenges now before this Court. The Board unanimously rejected those challenges and upheld the hearing officer's findings, conclusions, and recommendation.

B. SUBSTANTIVE FACTS

The FFCL follow the nine counts of the Amended Formal

[10] The ABA Standards cited are attached as Appendix D.

Complaint. The following summary proceeds chronologically.

1. 2001: Fredric's Mother Files for Divorce. Fredric Sues His Father in California for Illegal Wiretapping.

In January 2001, in Snohomish County Superior Court, Fredric's mother, Viveca Sanai (Viveca), filed a petition for dissolution of her marriage to her husband of forty years, Sassan Sanai, M.D. (Sassan). FFCL ¶2.

In March 2001, Viveca, Fredric, his brother Cyrus, and two sisters sued Sassan in the Los Angeles County Superior Court for, among other things, wiretapping telephone calls made to and from the family home in Edmonds, Washington. They demanded $1,000,000. FFCL ¶74; EX 167. In July 2001, the trial court quashed the summons issued for Sassan based on lack of personal jurisdiction because Sassan's contacts with the State of California were only "sporadic" and "insubstantial." EX 168-69. The ruling was upheld on appeal. FFCL ¶76.

2. 2002: Fredric Appears for His Mother in Post-Dissolution Proceedings. Fredric Sues His Father in Washington State Court and Twice in Federal Court for Illegal Wiretapping.

In April 2002, the Honorable Joseph A. Thibodeau entered a decree of dissolution ordering the sale of the family home and a vacant lot, with the proceeds of the sale to be divided equally between Viveca and Sassan. FFCL ¶ 4. Both properties are located in Edmonds, Snohomish County. EX 2. In June 2002, Fredric appeared for his mother and filed a

series of post-dissolution motions in the trial court. FFCL ¶¶ 9, 14, 15, 16. When Judge Thibodeau refused to stay the real estate sales unless Viveca posted a commercial surety bond, FFCL ¶ 7-10, Fredric filed lis pendens[11] notices against the real estate, which upset a pending sale on the vacant lot. FFCL ¶¶ 10, 12, 13.

In September 2002, Judge Thibodeau ruled the lis pendens filing "a misuse of that statutory scheme, because you have an adequate remedy at law." He ordered Viveca to lift the lis pendens unless the Court of Appeals issued a stay of his ruling, and he prohibited Viveca or Fredric from "taking any further action to delay or obstruct the sale of the vacant lot." FFCL 19. Judge Thibodeau granted a motion disqualifying Fredric from representing his mother and denied Fredric's many pending motions. FFCL ¶¶ 20, 21, 22. One such motion sought a new trial based on "new evidence" that Sassan had wiretapped telephone calls to and from the family home.

Meanwhile, on August 20, 2002, Viveca, Fredric, and three of his

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[11] "The purpose of a lis pendens is to give notice of pending litigation affecting the title to real property, and to give notice that anyone who subsequently deals with the affected property will be bound by the outcome of the action to the same extent as if he or she were a party to the action." United Savings & Loan Bank v. Pallis, 107 Wn. App. 398, 405, 27 P.3d 629 (2001). See RCW 4.28.320 ("[In an action affecting the title to real property,] the plaintiff ... may file with the auditor of each county in which the property is situated a notice of the pendency of the action.... From the time of the filing only shall the pendency of the action be constructive notice to a purchaser...."). See also RCW 4.28.325 (similar provisions for actions filed in federal district courts).

siblings brought suit in King County Superior Court (state court wiretapping litigation) against Sassan, his professional services corporation, Internal Medicine and Cardiology (IMC), and IMC employee Mary McCullough (McCullough) alleging wiretapping at the IMC offices in King County as a basis for venue there, in addition to the allegations of wiretapping at the family home in Edmonds that were made earlier in the California litigation. EX 167, 171.

On July 19, 2002, Sassan's lawyer William Sullivan (Sullivan) filed a grievance against Fredric on behalf of Sassan, which the Association closed once Sassan filed his own grievance on August 2, 2002.[12] TR 145-47, 327. Fredric then filed an amended complaint in the King County action to allege defamation claims against Sullivan and Sassan based on the grievance filings. FFCL ¶ 82. He also repeated claims that Judge Thibodeau had rejected only days earlier in the dissolution case. FFCL ¶ 81.

Fredric then used the state court wiretapping litigation to try to obtain a writ of attachment against Sassan's assets. He abandoned that effort once the Honorable Palmer Robinson required a $200,000

[12] Fredric asserts the Supreme Court "instructed [the Association] to instigate the disciplinary proceedings at issue here." Opening Brief at 10, 15. On September 15, 2003, the Court forwarded the Supreme Court pleadings to the Association "for review regarding the actions of attorney Fredric Sanai, WSBA #32347." EX 124. But, as noted above, the Association had already opened a file in the summer of 2002, and the matter was under investigation.

commercial surety bond to secure a $50,000 writ of attachment. FFCL ¶ 78.

The very same day that Fredric filed the amended complaint in the state court wiretapping case, Viveca, Fredric and his three siblings filed an action in the United States District Court for the Western District of Washington at Seattle for illegal wiretapping, seeking $16,000,000. It received Cause No. 02-02165 and was assigned to the Honorable Thomas S. Zilly. On November 22, 2002, Plaintiffs sought injunctive relief to "freeze assets." They also sought a temporary restraining order (TRO) pending hearing on the injunction. FFCL ¶¶ 90, 91, 92; EX 191 (Docket at sub-number 12). On December 4, 2002, Judge Zilly denied the TRO request. EX 191 (Docket number 17). At a December 17, 2002 hearing, he denied an injunction, noting: "[t]he parties for whatever reason cannot abide by the rulings of the eminently qualified trial judge in Snohomish County...." FFCL ¶ 96; EX 198 at 37.

Defendants (Sassan, McCullough and IMC) moved to stay the federal case given the pending state court wiretap litigation. FFCL 92; EX 196. On December 24, 2002, after the initial adverse rulings by Judge Zilly and before he could rule on the motion to stay, Fredric and Cyrus filed another wiretapping action in federal court. This action received cause number 02-2560 and was assigned to the Honorable Robert S.

Lasnik. Judge Lasnik reassigned it to Judge Zilly because it related to cause number 02-2165. Judge Zilly consolidated the cases under the lower cause number (the consolidated federal wiretapping litigation). FFCL ¶¶ 93-95.

The December 24 complaint added allegations of defamation against Sassan and Sullivan and Sullivan's law firm based on the grievances they had filed with the Association. EX 274 at 12 (Complaint). Fredric persisted in these claims despite a letter from the Association in November 2002 quoting ELC 2.12(b), which provides that such communications are "absolutely privileged, and no lawsuit predicated thereon may be instituted against any grievant, witness or other person providing information." EX 182.

3. 2003: Court of Appeals Rejects Viveca's Dissolution Appeal and Sanctions Her $10,000 for Abusing the Appellate Process. Fredric Sues Judicial Officers; Judge Coughenour Dismisses That Case. Fredric Files Partition Case; Judge Wynne Dismisses It as "Wholly Frivolous." Judge Zilly Holds Fredric in Contempt.

Following a dozen unsuccessful motions in the Court of Appeals challenging Judge Thibodeau's post-dissolution rulings, FFCL ¶¶ 26-36, Fredric began filing motions in the Washington Supreme Court. On June 10, 2003, Commissioner Crooks dismissed the pending motions and ruled that Fredric could not represent Viveca because the trial court order

disqualifying him had never been stayed. On September 5, 2003, Department II of the Supreme Court unanimously denied all pending motions and sanctioned Viveca and Fredric $1,000. FFCL ¶¶ 37-39.

Four days later, Fredric sued Commissioner Crooks, Judge Thibodeau and three Court of Appeals judges in federal court (the suit against judicial officers). Repeatedly and without success, he sought injunctive relief to allow him to represent Viveca and to stay "all proceedings in the dissolution action." FFCL ¶¶ 57-59. The Honorable John C. Coughenour dismissed the case, stating: "this Court is not a proper forum for such de facto appellate challenge." FFCL ¶ 68. Later, the Ninth Circuit affirmed. FFCL ¶¶ 69-70.

In December 2003, the Court of Appeals decided the dissolution appeal in Sassan's favor. Citing the "one and one half years of posttrial litigation and motions," which the court characterized as "inappropriate, untimely, and unduly repetitive," as well as errors in Viveca's opening brief (signed by Fredric, EX 97), the Court imposed $10,000 in sanctions against Viveca for her "extreme intransigence" and for "abusing the appellate process." FFCL ¶ 40.

After the Court of Appeals refused to stay the sale of the vacant lot and Judge Thibodeau released the lis pendens filed earlier by Fredric, Cyrus used the federal wiretapping litigation as a basis for new lis pendens

filings. FFCL ¶¶ 32, 33. At a hearing in the consolidated federal wiretapping case on May 15, 2003, which Fredric attended, the Plaintiffs agreed to dismiss the state court wiretapping case[13] and to file a new consolidated complaint in federal court. FFCL 100. Judge Zilly lifted the stay he had issued earlier. He also released the lis pendens filed by Cyrus and ordered Plaintiffs to "cease and desist from any further action to delay or obstruct the sale of those properties or filing any further lis pendens." FFCL ¶¶ 97, 101; EX 206 at 43-44.

Five days later, in spite of Judge Zilly's order, Fredric filed a new action in the King County Superior Court (the partition case) seeking "an order awarding to Viveca all of Sassan's right title and interest in the house and vacant lot and quieting title in favor of Viveca." EX 145; FFCL ¶¶ 162, 163. On May 20, 2003, and July 1, 2003, Fredric used that action to file still more lis pendens notices against the house and lot. FFCL ¶ 167.

In September 2003, Judge Zilly held Fredric and Viveca in contempt of court for filing the lis pendens. He ordered them to pay Sassan $3,400 in attorney's fees and sanctioned them $2,500 payable to

[13] Fredric appealed the sanctions ordered against him under Rules 15 and 41 of the Civil Rules (CR) in the state court wiretapping case. The Court of Appeals reversed. Fredric has referred to this as a "win," but he fails to mention that the appellate court also remanded to allow Sassan and the other defendants to seek sanctions against him under CR 11. FFCL ¶¶ 87-89.

the registry of the court. FFCL ¶ 110.

In November 2003, Judge Zilly dismissed defamation claims against Sullivan citing "the WSBA Communication Privilege." FFCL 134. Also in the Fall of 2003, Judge Zilly quashed a subpoena issued by Fredric due to his failure to provide notice to opposing counsel as required by Rule 45 of the Federal Rules of Civil Procedure (FRCP). FFCL ¶¶ 115-117.

A magistrate judge described additional subpoenas issued by Fredric as "calculated to result in annoyance, undue burden and expense and to invade [McCullough's] privacy." FFCL ¶ 119. She ordered Fredric to withdraw all subpoenas he had issued for the financial records of McCullough, Sassan, and IMC, and she ordered him to provide any documents received under the subpoena to Defendants' counsel without retaining any copies. EX 220. In violation of that order, Fredric used the documents in the state court litigation stating: "Once Plaintiffs received the discovery, Plaintiffs were free to use it. Magistrate Judge Thieler's [sic] order to return the discovery was too late. The cat is out of the bag." EX 227 at 6; FFCL ¶¶ 118-21.

The partition action was transferred to Snohomish County and dismissed in December 2003 by the Honorable Thomas J. Wynne. Judge Wynne found the action "wholly frivolous" and "a blatant attempt to

forum shop." FFCL ¶174.

4. 2004: Judge Zilly Sanctions Fredric $5,000 for Filing Third Federal Wiretap Case.

On July 19, 2004, ten days after Judge Zilly denied the Plaintiffs' request to file an amended complaint in the consolidated federal wiretap case, Fredric filed a new complaint in federal court (number 04-01594) repeating defamation and other claims that Judge Zilly had dismissed in the consolidated case. Judge Zilly dismissed the "substantially identical" claims as "frivolously asserted," sanctioned Fredric, Viveca, and Cyrus $5,000, and stayed further action pending the final disposition of the consolidated federal wiretapping case. FFCL ¶¶ 150-56.

In October 2004, Fredric issued a subpoena to the Redmond General Insurance Agency, as attorney for his sister Ingrid Sanai Buron (Ingrid). Again, he failed to provide notice to opposing counsel as required by FRCP 45. FFCL 122-25.

5. 2005: Judge Zilly Dismisses Consolidated Federal Wiretapping Case and Sanctions Fredric $273,437 for Vexatious Litigation. Ninth Circuit Upholds Contempt Order and Order Dismissing Suit Against Judges.

In January 2005, Judge Zilly quashed the Redmond General Insurance Agency subpoena, ordered Fredric to pay $1,740 in attorney's fees, and disqualified him from representing Ingrid. FFCL ¶¶ 126, 127.

By May 2005, most of Plaintiffs' claims in the consolidated federal

wiretapping case, including the defamation claims against Sassan, had been dismissed. FFCL ¶ 140. On July 1, 2005, Judge Zilly dismissed all Plaintiffs' remaining claims due to litigation misconduct, and he allowed Defendants to claim attorney's fees under 28 U.S.C. § 1927. He wrote:

> Plaintiffs' conduct in this litigation has been an indescribable abuse of the legal process, unlike anything this Judge has experienced in more than 17 years on the bench and 26 years in private practice: outrageous, disrespectful, and in bad faith. Plaintiffs have employed the most abusive and obstructive litigation tactics this Court has ever encountered, all of which are directed at events and persons surrounding the divorce of Sassan and Viveca Sanai, including parties, lawyers, and even judges. Plaintiffs have filed scores of frivolous pleadings, forcing baseless and expensive litigation. The docket in this case approaches 700 filings, a testament to Plaintiffs' dogged pursuit of a divorce long past.

FFCL ¶ 141; EX 252 (July 1, 2005 Order at 2). In a Motion for Stay Pending Appeal, Fredric claimed that the July 1, 2005 order "is void in its entirety and therefore may be ignored by Plaintiffs." EX 253 at 2. For vexatious litigation, Judge Zilly ordered Fredric, Cyrus, and Viveca to pay Defendants $273,437 in attorney's fees. Only Defendants' counterclaims remained in the consolidated federal wiretapping litigation. FFCL ¶¶ 145, 148.

In August 2005, the Ninth Circuit upheld Judge Coughenour's decision dismissing the suit against judicial officers. FFCL ¶¶ 69, 70. That decision also upheld Judge Zilly's order finding Fredric in contempt.

FFCL ¶ 112.

6. 2006: Court of Appeals Upholds Dismissal of Partition Case and CR 11 Sanctions Against Fredric.

In January 2006, the Court of Appeals upheld Judge Wynne's dismissal of the partition case and his decision to sanction Fredric and Viveca under CR 11 and RCW 4.84.185 (frivolous claims). FFCL ¶¶ 180-183. In February 2006, Snohomish County Superior Court Judge Kenneth Cowsert granted IMC's motion for special notice regarding any distribution of the dissolution proceeds given IMC's judgment against Viveca, Fredric, and Cyrus for its portion of the attorney's fees awarded by Judge Zilly. EX 63.

IV. ARGUMENT

A. STANDARD OF REVIEW

The abuse of discretion standard of review applies to all four procedural issues raised by Fredric. Hahn v. Boeing Co., 95 Wn.2d 28, 33, 36, 621 P.2d 1263 (1980) (pro hac vice admission requests); Doe v. Puget Sound Blood Ctr., 117 Wn.2d 772, 777, 819 P.2d 370 (1991) (denial of requested discovery); Shields v. Morgan Financial, Inc., 130 Wn. App. 750, 759, 125 P.3d 164 (2005), review denied, 157 Wn.2d 1025, 125 P.3d 164 (2006) (granting motion for protective order); Whitney, 155 Wn.2d at 465 (denial of motion for continuance). The abuse of discretion standard "recognizes that deference is owed to the judicial actor who is better

positioned than another to decide the issue in question." Physicians Ins. Exch. v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (citations omitted). A reviewing court may overturn such a discretionary decision only if there is a manifest abuse of discretion. Whitney, 155 Wn.2d at 465.

B. THE HEARING OFFICER AND THE BOARD CHAIR DID NOT ABUSE THEIR DISCRETION IN DENYING FREDRIC'S PRO HAC VICE ADMISSION REQUESTS FOR HIS BROTHER, CYRUS SANAI

The hearing officer may make rulings to "insure a fair and orderly proceeding," and the Board chair may issue orders "as appear appropriate to assure fair and orderly Board review." ELC 10.1, 11.13. A lawyer not admitted to practice in this state may appear in a particular action or proceeding here only with the permission of the court or tribunal in which the action or proceeding is pending, and only in association with a locally admitted lawyer. Rule 8(b) of the Admission to Practice Rules (APR). In considering a pro hac vice application, "legitimate judicial needs" to be considered include "reasonable assurance that the attorney... will conduct himself in an ethical and respectful manner in the trial of the case...." Hahn, 95 Wn.2d at 34. The denial of permission to appear pro hac vice is in effect a disqualification, and lies within the discretion of the trial judge. Id. at 33.

1. The Hearing Officer Did Not Abuse His Discretion in Denying Cyrus's Application for Pro Hac Vice Admission.

Fredric argues that the hearing officer committed error by denying his January 29, 2007 Motion for Association and Motion for Admission Pro Hac Vice. BF 63. Fredric's brother, Cyrus, is admitted to practice law in California. EX 167. In 2004, over the Association's objection, Cyrus was admitted pro hac vice in association with Street, who then represented Fredric. BF 18. In October 2006, when the hearing officer allowed Street to withdraw, he vacated Cyrus's pro hac vice admission. BF 49. On November 1, 2006, the hearing officer set an April 16, 2007 hearing date, BF 53, thereby allowing Fredric six months to secure new counsel.

Three months later, Fredric moved to admit Cyrus pro hac vice a second time, this time with Fredric as local counsel. The Association opposed the motion based on Cyrus's record of misconduct subsequent to his earlier pro hac vice admission. BF 66, 67. By order filed February 15, 2007, the hearing officer denied the motion,[14] citing the following:

- In a California case Cyrus was found to have "intentionally altered court documents to show that certain individuals were served on behalf of corporate defendants" and also appeared "to have intended to file and serve the memorandum in a

[14] Given that Fredric had six months to secure new counsel before the disciplinary hearing, his claim that the hearing officer's decision was a "last minute deprivation . . . intended to inflict the maximum amount of prejudice," Opening Brief at 30 (emphasis added), is disingenuous.

manner and time to prevent the parties from obtaining actual notice in time to challenge it;"

- Cyrus filed a lis pendens against certain property in direct contravention of a federal court order and was held in contempt of court;

- In November 2005, the federal court sanctioned Cyrus $280,000 for litigation misconduct;

- While representing Fredric in this proceeding, Cyrus filed a witness list late and without contact information as required by the hearing officer's scheduling order; and

- While representing Fredric in this proceeding, Cyrus agreed to provide overdue exhibits by October 9, 2006, but failed to do so.

BF 79. Based on the evidence of Cyrus's past litigation misconduct, the hearing officer acted well within his discretion in denying him admission pro hac vice. See ELC 10.1; Hahn, 95 Wn.2d at 33-34.

2. The Board Chair Did Not Abuse Her Discretion in Denying Cyrus's Application for Pro Hac Vice Admission.[15]

In August 2007, Fredric moved for Cyrus's pro hac vice admission so that he could argue Fredric's case before the Disciplinary Board, and supported that application with Cyrus's declaration. BF 113, 115. The Association opposed the request based on Cyrus's extensive litigation misconduct, including a recent California court order that not only refuted

[15] Although he does not set out the relevant facts or specifically argue the point, Fredric asserts in his brief that the "Disciplinary Board denied [Fredric]'s right to counsel of his choice." Opening Brief at 27.

Cyrus's prior characterization of the California litigation, but also required Cyrus to pay $1,003,426.25 in attorney's fees for his bad faith and harassing litigation tactics. BF 139, 140, 142. The Association also cited Cyrus's recent attempt to thwart the disciplinary proceeding by suing the hearing officer and others in federal district court in Oregon. BF 132 (Eide Declaration with Oregon case docket and selected pleadings). Cyrus, on behalf of Fredric, had filed the Oregon case less than two weeks after the hearing officer denied his second pro hac vice admission request. BF 79, BF 132 at EX 1.

The Board chair denied Cyrus's request for admission pro hac vice, citing the lack of a locally admitted representative for respondent. BF 143. Fredric then renewed his motion, proposing that Cyrus associate himself with one Christopher Dumm, a lawyer admitted in Washington. BF 144, 145. The Association renewed its opposition. BF 146. By order filed November 20, 2007, the Board chair denied Fredric's motion, citing the hearing officer's earlier rationale. BF 149. Given Cyrus's extensive litigation misconduct and his attempts to thwart the disciplinary proceeding, there could be no "reasonable assurance" that he would "conduct himself in an ethical and respectful manner" in this case. Hahn, 95 Wn.2d at 34. Consequently, the denial of his applications to appear pro hac vice was within the sound discretion of the hearing officer and the

Board chair. Id. at 33.

3. Fredric's Constitutional Claims Are Meritless.

Fredric argues that the hearing officer's denial of Cyrus's second pro hac vice application was a violation of his constitutional right to counsel under the Fifth and Sixth Amendments to the United States Constitution. Opening Brief at 27. But neither provision requires the pro hac vice admission of a lawyer in a particular action or proceeding where there is no reasonable assurance that he would conduct himself in an ethical and respectful manner.

First, the Sixth Amendment right to counsel applies by its terms only to "criminal prosecutions." A lawyer discipline proceeding is not a criminal prosecution, so the Sixth Amendment simply does not apply, and cases interpreting the Sixth Amendment are inapposite.[16] See ELC 10.14(a); In re Conduct of Harris, 334 Or. 353, 358, 364, 49 P.3d 778 (2002) (no constitutional right to counsel for lawyer facing disbarment).

Second, Fredric incorrectly assumes there is an absolute right to counsel of one's choice under the Fifth and Fourteenth Amendments

[16] For example, Fredric's cites United States v. Gonzalez-Lopez, 548 U.S. 140, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006) (Opening Brief at 28, 30), a criminal case. Moreover, that case did not address the issue of whether denial of pro hac vice admission was improper because the Government conceded that. 548 U.S. at 144. The Court held the conceded violation was not subject to harmless error analysis. Id. at 150. Fredric persists in misstating the holding of Gonzalez-Lopez even after the Association pointed out his misstatement in response to his brief to the Board. BF 120 at 15.

unless counsel's participation would lead to an impermissible conflict of interest or to the disclosure of confidential information. Opening Brief at 28-29. But those are not the only two reasons for refusing to admit a lawyer pro hac vice or for disqualifying a lawyer from continuing in a case. For example, McCuin v. Texas Power & Light Co., 714 F.2d 1255, 1263 (5th Cir. 1983), one of the cases cited by Fredric, recognizes that considerations regarding the integrity of the judicial process apply:

> The right to counsel of one's choice may be overridden when "compelling reasons exist." The right should be balanced in cases in which it is challenged against the right to "untainted prosecution of the lawsuit" and society's need to maintain the highest ethical standards of professional responsibility. It cannot be exercised without thought also to the needs of effective administration of justice.

(footnotes omitted); see also In re BellSouth, 334 F.3d 941, 955 (11th Cir. 2003) ("it is also well established that the right to counsel [of choice] is not absolute"). In this case, given Cyrus's extensive litigation misconduct and his attempts to thwart the disciplinary proceeding, the needs of effective administration of justice and the need to maintain ethical standards justify the discretionary denial of his pro hac vice application.

C. THE HEARING OFFICER PROPERLY DENIED THE REQUESTED JUDGES' DEPOSITIONS

A hearing officer may exercise discretion in limiting discovery. ELC 10.11(d); see also ELC 10.1(c). The scope of discovery is within the

hearing officer's discretion. Since the hearing officer may look to the Civil Rules for guidance, ELC 10.1(a), cases deciding discovery disputes in Superior Court provide helpful analogies. See Puget Sound Blood Ctr., 117 Wn.2d at 777. The hearing officer acts within his discretion when he determines whether evidence sought in a discovery request is relevant. See deLisle v. FMC Corp., 57 Wn. App. 79, 86, 786 P.2d 839 (1990), review denied, 114 Wn.2d 1026 (1990). The hearing officer's discretion is very broad because of his unique perspective of the litigation. See Kramer v. J.I. Case Mfg. Co., 62 Wn. App. 544, 556, 815 P.2d 798 (1991). A hearing officer's discovery ruling will be reversed only when it is clearly shown that he was manifestly unreasonable, or that he exercised his discretion on untenable grounds or for untenable reasons. See Puget Sound Blood Ctr., 117 Wn.2d at 778.

On February 2, 2007, six days before the discovery cut-off, BF 53, Fredric moved for an order authorizing deposition subpoenas for three Ninth Circuit judges. BF 68. Judges Canby and Rawlinson had signed the August 17, 2005 opinion that affirmed Judge Coughenour's dismissal of Fredric's suit against judicial officers and Judge Zilly's order finding Fredric in contempt. Id. at 5; FFCL ¶¶ 69, 70, 112. Judge Kozinski had written an article "castigating Cyrus Sanai." BF 68. Fredric claimed that these judges would "acknowledge" various facts concerning the

appointment of "special purpose judicial officers" in the federal courts, that they would be "unable to explain or refuse to explain" their decisions, and that they would "blame" another judge or a staff attorney "for leading them astray." Id. The Association opposed Fredric's motion on several grounds, and it was denied. BF 71, 80. Citing no authority, Fredric asserts that the hearing officer's denial of his motion was error. Opening Brief at 30-31.

To begin with, Fredric's motion was untimely. The November 1, 2006 Order Setting Hearing Date required that all depositions be completed by February 8, 2007. BF 53, 72. Fredric made no effort between November 1, 2006, and February 2, 2007, to take any depositions, and he offered no reasonable excuse for his delay. It was not an abuse of discretion to disallow discovery that could not possibly be completed before the discovery cut-off and would not likely be completed before the hearing date, if indeed it could ever occur. See Dempere v. Nelson, 76 Wn. App. 403, 405-06, 886 P.2d 219 (1994), review denied, 126 Wn.2d 1015 (1995) (no abuse of discretion for trial court to enforce its discovery cut-off when a party violated scheduling order without "reasonable excuse").

Second, Fredric did not establish that the proposed testimony was "reasonably calculated to lead to the discovery of admissible evidence"

under CR 26(b)(1). He argued that "[t]he three judges are being asked to do nothing more than explain their views of the case and to justify their reasoning." BF 68 at 7. But it is well established that a judge cannot be compelled to testify to explain his or her mental process in reaching a decision. See, e.g., Fayerweather v. Ritch, 195 U.S. 276, 307, 25 S. Ct. 58, 49 L. Ed. 193 (1904) (testimony of trial judge as to basis of opinion "was obviously incompetent"); Robinson v. C.I.R., 70 F.3d 34, 38 (5th Cir. 1995), cert. denied,, 519 U.S. 824 (1996) (court properly declined to subpoena judge about allocation of judgment); United States v. Roth, 332 F. Supp. 2d 565, 567-68 (S.D.N.Y. 2004) (judge could not be compelled to testify about his reason for accepting reduced plea); In Re: Disciplinary Matter of Fletcher, 424 F.3d 783, 794-95 (8th Cir. 2005), cert. denied, 547 U.S. 1071 (2006) (no error to deny judge's deposition in lawyer discipline case). It was not an abuse of discretion for the hearing officer to refuse to authorize subpoenas not reasonably calculated to lead to admissible evidence.

D. THE HEARING OFFICER PROPERLY GRANTED THE ASSOCIATION'S MOTION FOR A PROTECTIVE ORDER AS TO FREDRIC'S REQUESTS FOR ADMISSION.

The granting or denial of a protective order limiting discovery is subject to review for an abuse of discretion. Shields, 130 Wn. App. at 759 (no abuse of discretion in denying production of loan files or in granting

protective order precluding depositions of corporate officers). A trial court abuses its discretion "only if its ruling is manifestly unreasonable or is based upon untenable grounds or reasons." King v. Olympic Pipe Line Co., 104 Wn. App. 338, 348, 16 P.3d 45 (2000); Shields, 130 Wn. App. at 759. In responding to requests for admission, a party is not required to concede legal conclusions. Thompson v. King Feed & Nutrition Service, Inc., 153 Wn.2d 447, 472, 105 P.3d 378 (2005); Brust v. Newton, 70 Wn. App. 286, 295, 852 P.2d 1092 (1993), review denied, 123 Wn.2d 1010 (1994).

On January 9, 2007, the Association received 72 Requests for Admission from Fredric. BF 60. Most of them requested that the Association admit various legal conclusions. Id. The Association agreed to respond to Requests Nos. 15-17, 31-32, 35, 43 and 51 and moved for a protective order as to the remaining requests. BF 59. The hearing officer granted the motion in significant part, requiring the Association to respond only to Requests Nos. 15-17, 31-32, 35, 43, 51 and 63.[17] Fredric contends that this was error.

The hearing officer's ruling was based on tenable grounds and reasons. The Association was not required to respond to Requests Nos. 1-

[17] Fredric asserts, contrary to fact, that "the Hearing Officer issued an order relieving the Association from any obligation whatsoever to answer these requests." Opening Brief at 21 (emphasis added).

14, 18-19, 23, 28-30, 33, 36-40, 42, 44-45, 47, 52, 59-62 and 66-72 because they sought legal conclusions.[18] BF 81 at ¶ 1; see Thompson, 153 Wn.2d at 471-75; Brust, 70 Wn. App. at 295. The Association was not required to respond to Requests Nos. 20-21 and 26-27 because they were irrelevant to the matters at issue.[19] BF 81 at ¶ 2; see CR 26(b)(1). The Association was not required to respond to Requests Nos. 22, 24-25, 34, 46, 48-49 and 53-54 because they sought "conclusions which contain a subjective component concerning the reason for an action of which the . . . Association could have no direct personal knowledge."[20] BF 81 at ¶3; see Brust, 70 Wn. App. at 295 n.8. Finally, the Association was not required to respond to Requests Nos. 41, 50, 55-58 and 64-65 because they were unduly burdensome.[21] BF 81 at ¶ 4; ELC 10.11(d). Because the hearing officer's ruling was not "manifestly unreasonable" or "based upon untenable grounds or reasons," it should not be disturbed on appeal. King,

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[18] An example is Request No. 40, which states: "Judge Thibodeau's disqualification of Fredric Sanai violated Fredric Sanai's due process rights by removing him from the case arbitrarily."

[19] An example is Request No. 21, which asked the Association to admit what Viveca did in her capacity as a pro se litigant. It is the conduct of Fredric, not Viveca, that is at issue in this matter. See ELC 1.2 (jurisdiction).

[20] An example is Request No. 24, which states in part: "The Justices [sic] of the Washington State Court of Appeals . . . have deliberately ignored the argument." The Association has no direct personal knowledge of whether a particular judge ignored a particular argument or, if so, whether he or she did so deliberately or inadvertently.

[21] An example is Request No. 50, which asked the Association to admit that certain conduct is a "common practice" by Washington judges. Even if it were relevant to some matter at issue herein (which it is not), the Association could not respond to this request without polling a statistically significant sampling of Washington judges.

104 Wn. App. at 348; Shields, 130 Wn. App. at 759.

E. THE HEARING OFFICER PROPERLY DENIED FREDRIC'S ELEVENTH-HOUR REQUESTS FOR CONTINUANCE.

1. The Standard of Review for Denial of a Request for Continuance is Abuse of Discretion. A Reviewing Court Gives Great Deference to a Hearing Officer's Credibility Determinations.

A hearing officer has discretion to grant or deny a continuance. ELC 10.12(f). On appeal, such a discretionary act will not be overturned absent a showing of "manifest abuse of discretion." Whitney, 155 Wn.2d at 465 (upholding denial of respondent's requested continuance). Factors to be considered in exercising that discretion include (1) "the necessity of reasonably prompt disposition of the litigation;" (2) "the needs of the moving party;" (3) "possible prejudice to the adverse party;" (4) "the prior history of the litigation, including prior continuances granted the moving party;" and (5) "any other matters that have a material bearing upon the exercise of the discretion vested in the court." Trummel v. Mitchell, 156 Wn.2d 653, 670-71, 131 P.3d 305 (2006) (citation omitted). An abuse of discretion occurs only when a decision is based "'upon a ground, or to an extent, clearly untenable or manifestly unreasonable.'" Id. at 671 (quoting Friedlander v. Friedlander, 80 Wn.2d 293, 298, 494 P.2d 208 (1972)) (emphasis added).

This Court consistently gives great deference to hearing officers'

credibility determinations, refusing to review them de novo. See, e.g., In re Disciplinary Proceeding Against Dann, 136 Wn.2d 67, 77, 960 P.2d 416 (1998), In re Disciplinary Proceeding Against Marshall, 160 Wn.2d 317, 330, 157 P.3d 859 (2007). De novo review will not be applied even when credibility must be determined based solely on documentary evidence. In re Rideout, 150 Wn.2d 337, 350, 77 P.3d 1174 (2003). A doctor's statement "carries little weight" if it lacks specificity, and a hearing officer need not credit even unrebutted medical testimony if he is not persuaded by it. In re Disciplinary Proceeding Against Cohen, 150 Wn.2d 744, 757, 82 P.3d 224 (2004) (Cohen II); In re Disciplinary Proceeding Against Whitt, 149 Wn.2d 707, 722, 72 P.3d 173 (2003).

2. The Trummel Factors Support the Denial of Fredric's Request for Continuance.

a. Prompt Disposition of the Litigation

Granting or restricting a lawyer's license implicates important public interests. "Our paramount concerns in fulfilling our responsibility for lawyer discipline are to protect the public, to deter lawyer misconduct, to preserve confidence in the legal profession, and to maintain the integrity of the judicial system." In re Disciplinary Proceeding Against McGough, 115 Wn.2d 1, 8, 793 P.2d 430 (1990). Lawyer discipline cases have priority when the Court sets oral argument. ELC 12.7(b). Accordingly,

both this Court's rules and its prior decisions demonstrate that lawyer discipline cases demand prompt resolution.

By the time Fredric made his last-minute request for delay in April 2007, this case had already been delayed for two years since the initial March 2005 hearing date. While the hearing officer had refused to continue the October 2006 hearing date because Cyrus's "primary occupation" made it inconvenient, he did continue the hearing a few weeks later when Street asked to withdraw. At that time, the hearing officer acknowledged the important public interests at stake, TR (10/2/06) at 24-25 (referencing disciplinary counsel's arguments at 15 and 22-23), but nevertheless granted Fredric a continuance. The need for reasonably prompt disposition of this matter weighed against yet another continuance in April 2007 on the eve of the disciplinary hearing.

b. Needs of the Moving Party

Fredric has argued that he "needs" to be represented by his brother and that he "needs" to have the hearing moved closer to his home. He asked the hearing officer to move the hearing to Oregon for his convenience, and, even though the witnesses reside primarily in King and Snohomish Counties, he asks this Court to remand for a hearing in Clark County because "[i]t is the Washington county closest to where [he] resides." Opening Brief at 35. None of these supposed "needs" are

legitimate reasons for moving the hearing in time or place.

The second Trummel factor weighs in favor of a continuance when a party or an important witness presents credible evidence of a health emergency. An affidavit in support of such a continuance must be credible to assign this factor any weight. As discussed below, Fredric failed to offer adequate, credible evidence to show that a last-minute continuance of the April 2007 hearing was necessary.

c. Possible Prejudice to the Adverse Party

The Association named eight lawyers as possible witnesses. BF 46. Fredric's April 2007 request was the second time that these busy practitioners were asked to rearrange their schedules and recall events already several years old. The burden placed on these witnesses was substantial, and Fredrric should not be heard to minimize their inconvenience while protesting so loudly about his own. The third Trummel factor weighs in favor of the Association.

d. Prior History of the Proceeding, Including Prior Instances of Obstruction and Delay

This matter was originally set for hearing in March 2005. With the first hearing date a few months away, Fredric sought to stay the proceedings. The hearing officer stayed the proceedings, and stayed it again two more times. Finally, the hearing was set for October 2006. A

few days before the deadline to move for a continuance of the hearing date, Fredric sought a continuance based on his brother's "busy schedule." That request was denied. Then, just two weeks before the scheduled hearing, Fredric sought "a brief continuance" because his local counsel, Street, wished to withdraw. The hearing officer granted that request and rescheduled the hearing yet again.

On Friday, April 13, 2007, just hours after a federal judge refused to enjoin the disciplinary hearing set for the next business day, Fredric sought another continuance for unspecified medical reasons. The hearing officer denied it. Then, on Monday, April 16, 2007, the hearing officer received yet another request for continuance with the typed statements Fredric drafted for himself and his physician. Given what the hearing officer called Fredric's "long history of intransigence here," TR 279, as demonstrated by his repeated attempts to delay and thwart the disciplinary hearing, the fourth Trummel factor weighs in favor of the Association.

e. Other Matters Bearing on the Hearing Officer's Discretion

Fredric apparently concedes that his "virtually unreadable" doctor's note of April 13, 2007, was inadequate. He focuses instead on the doctor's statement that he faxed to the hearing officer's office in Chehalis at 3:55 p.m. on Monday, April 16, 2007, while the hearing officer was in Seattle presiding over the disciplinary hearing. BF 94. That

statement referred to "symptoms of hypertension," to an unspecified blood pressure reading described as "dangerously high," and to some unspecified "antihypertensive medication" prescribed for Fredric Id. On the basis of that statement, Fredric contends it is "uncontested" that he was unable to participate in the disciplinary hearing. Opening Brief at 27. This argument ignores the hearing officer's credibility findings.

Fredric himself testified by telephone on the morning of Tuesday, April 17, 2007. Among other things, Fredric claimed he was "sure" there was a causal link between his medical condition and the denial of his brother's request for pro hac vice admission. TR 242. He admitted that he had drafted the doctor's statement. TR 232. The hearing officer noted that "[t]here is no indication in that letter [from Dr. McDonough] as to what the blood pressure is." Furthermore, the hearing officer pointed out that "[t]he letter does not indicate what [the] symptoms are [at] present," and that "[t]here is no indication as to what medications were prescribed or when the medications were prescribed." TR 246. After listening to Fredric's testimony and the arguments of counsel, the hearing officer denied Fredric's latest request for delay.

In a somewhat different context, this Court "agree[d] with [a] hearing officer that the letter from [respondent's] physician carries little weight given its lack of specificity about his conditions." Cohen II, 150

Wn.2d at 757 (Cohen offered the letter to justify his late withdrawal from his client's case). Like the doctor's letter at issue in Cohen II, Dr. McDonough's statement "fails to discuss how long [the respondent] suffered from the conditions." Id. Fredric testified it is a preexisting condition, TR 235, and implies it is a chronic condition. Opening Brief at 21, 46. Fredric's submissions fail to address whether he had been compliant in taking any previously prescribed medication or following any previously prescribed health regimen. In Cohen II, this Court also agreed with the hearing officer that the lack of expert testimony subject to cross-examination did not require the hearing officer to accord weight to the letter. 150 Wn.2d at 756-57.

In addition to the lack of specificity, the hearing officer in this case also noted that the letter did not appear on the doctor's letterhead and included an unfamiliar certification. TR 246. The certification did not comply with RCW 9A.72.085. The hearing officer found "[t]he letter from Dr. McDonough... does not have the ring of truth, in my judgment." TR 246.

"A hearing officer's findings are given considerable weight especially when they address credibility and veracity of the witnesses." Whitt, 149 Wn.2d at 717. As Whitt illustrates, even medical testimony need not be credited if the hearing officer finds it unpersuasive. 149

Wn.2d at 722 (hearing officer could reject personal and emotional problems mitigating factor based on unrebutted testimony by Whitt's counselor and psychologist; substantial evidence did not support Board's contrary finding). Similarly, here the hearing officer did not accord much weight to the doctor's statement.

Nor did the hearing officer find Fredric credible: "the communication from Mr. Sanai frankly does not have the ring of truth, in my judgment." TR 246. He found it "inconceivable" that Fredric could not recall his April 13, 2007 blood pressure readings. The hearing officer found it "incredible" that the alleged problem was not mentioned during the April 6, 2007 pre-trial conference after he specifically asked both parties if there was any reason why the hearing could not proceed. TR 247. He added that another reason he denied the continuance "was the fact that I believe that there has been a concerted effort to delay and keep this hearing from happening." TR 278. He also mentioned the attempt to enjoin the proceeding that failed "hours prior to the communication that I received from Mr. Sanai indicating that he had requested a continuance." TR 279. This Court gives great deference on review to the hearing officer's credibility determinations.

"Moreover, this court may not substitute its own evaluation of the credibility of witnesses over that of the hearing examiner." Dann, 136

Wn.2d 67 at 77 (citation omitted) (hearing officer could reject respondent's "various explanations" and rationalizations for his misconduct). In Marshall, 160 Wn.2d at 332, this Court refused to upset the hearing officer's conclusion that Marshall's testimony was not credible. As Rideout illustrates in the context of contempt proceedings, even credibility determinations made entirely on documentary evidence "should be given deference and evaluated to determine if there was substantial evidence to support them." 150 Wn.2d at 341.

In Rideout, a court commissioner held a mother in contempt of court regarding visitation based on declarations submitted by the parties. The Court of Appeals affirmed concluding "that it would not review the documentary materials and affidavits de novo but would determine only whether substantial evidence supported the trial court's determination that [the mother] had acted in 'bad faith.'" 150 Wn.2d at 348. This Court agreed and distinguished a line of cases holding that an appellate court may engage in de novo review of trial court decisions based on declarations and other documentary evidence. "The aforementioned cases differ from the instant in that they did not require a determination of the credibility of a party. Here, credibility is very much at issue." Id. at 350. Moreover, "no Washington appellate court reviewing documentary records has weighed credibility." Id.

The Court also noted that "[the mother] had a right to request the opportunity to present live testimony..., but she failed to make that request." Id. at 352. In the instant case, the hearing officer did not rely on documentary evidence alone because sua sponte he arranged for Fredric to appear by telephone on the morning after he had submitted written statements, and Fredric agreed to testify under oath. Like the mother in Rideout, Fredric could have asked his doctor to appear by telephone. He had the burden of persuasion.

Finally, in Rideout, this Court noted that "trial courts are better equipped than multijudge appellate courts to resolve conflicts and draw inferences from the evidence." 150 Wn.2d at 352. The Court recognized that "'local trial judges decide factual domestic relations questions on a regular basis' and consequently stand in a better position than an appellate judge to decide whether submitted affidavits establish adequate cause for a full hearing on a petition to modify a parenting plan." Id. (citing In re Parentage of Jannot, 149 Wn.2d 123, 126, 65 P.3d 644 (2003)).

While it may not be that Hearing Officer Mano decides motions for continuance "on a regular basis," he had faced the issue of delay and three prior continuance requests before he received Fredric's April 16, 2007 submissions and heard his April 17, 2007 testimony. Moreover, he had lived with this case for over two years and had extensive knowledge

of Fredric's prior efforts to delay, relocate, and enjoin the hearing. His credibility findings are supported by substantial evidence and should not be upset.

3. Given this Record, Fredric Cannot Establish That the Hearing Officer Based his Decision on Clearly Untenable Grounds or Acted in a Manifestly Unreasonable Way

In addition to the five factors discussed above, Trummel and other cases teach that an abuse of discretion occurs when a decision is "based upon a ground, or to an extent, clearly untenable or manifestly unreasonable." 156 Wn.2d at 671. Reasonable people may disagree. To find an abuse of discretion this Court must conclude that "no reasonable person would take the view adopted." Whitney, 155 Wn.2d at 465. Trial courts and hearing officers are vested with considerable discretion as the decision makers with the most intimate knowledge of the proceedings before them and best able to judge whether evidence is relevant or a continuance is warranted. A long line of cases in lawyer discipline and other contexts give special deference on review to the lower tribunal's credibility determinations.

On appeal to this Court, Fredric states that after seeing his doctor, he "took a week of medical leave and canceled all of his trial appearances for the subsequent five weeks in accordance with his physician's instructions." Opening Brief at 21. However, if Fredric had truly

intended to attend the April 16, 2007 hearing, and if he only failed to attend due to a last-minute medical emergency, then he would have already taken leave to attend what he himself predicted would be a two-week hearing. Likewise, if he truly intended to attend the April 16, 2007 hearing, then he would not have scheduled any court appearances for the next two weeks, so he would not have needed to cancel them.

Fredric did not file objections to the Association's exhibits by March 16, 2007, as required by the scheduling order even though that deadline came over ten days before he first saw a physician for his blood pressure problem. Although he testified that he had two doctor visits by then, he failed to disclose any health problems during the pretrial conference ten days before the scheduled hearing when the Association might have had time to seek a medical release and review the records. He did not file a hearing brief on April 6, 2007, as required by the scheduling order. While he claimed he had not received the hearing officer's April 13, 2007 letter-ruling denying a continuance, citing the "virtually unreadable" doctor's note, by the end of the next business day, he provided perfectly legible statements.

In October 2006, the hearing officer accepted Street's explanation that medical and other problems compelled him to withdraw and seek a continuance. In April 2007, when again faced with a health issue as the

reason for a continuance, the hearing officer opted not to rely on documentary evidence alone, but also afforded Fredric a time to appear by telephone and present any additional testimony or argument on point. For all the reasons discussed above, he did not find the evidence credible.

Between Fall 2006 and Spring 2007, Fredric had expressed his unwillingness to miss time from work or incur travel expenses when he sought to move the hearing to Oregon from Seattle. He attributed his blood pressure problem to the hearing officer's denial of his motion to let his brother represent him. He followed that decision with a federal lawsuit seeking to enjoin the hearing – an effort which failed only hours before the requested continuance. Against this greatly altered landscape demonstrating the extreme measures Fredric would employ to block any hearing in Seattle on the Association's serious charges of misconduct, one cannot say that the hearing officer exercised his discretion to deny a continuance on clearly untenable grounds or that no reasonable person would take the view adopted.

V. CONCLUSION

For years, Fredric has burdened his father, his father's professional services corporation, his father's employee, his father's lawyers, the judges who ruled against him, and the courts with frivolous motions and complaints while demonstrating an inability or unwillingness to follow

court orders and rules. He fails to challenge the hearing officer's factual findings, conclusions of law, and disbarment recommendation. The Association urges the Court to reject Fredric's attempts at further delay and to affirm the hearing officer's findings as adopted by the Board, to respect the hearing officer's credibility determinations that led to the denial of Fredric's last minute continuance request, and to reject that and Fredric's other three procedural challenges, as did a unanimous Disciplinary Board.

RESPECTFULLY SUBMITTED this 11th day of July, 2008.

WASHINGTON STATE BAR ASSOCIATION

Linda B. Eide, Bar No. 10637
Senior Disciplinary Counsel

APPENDIX A

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

IN RE: FREDRIC SANAI, Lawyer (WSBA No. 32347).	Public File No. 04#00044 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND HEARING OFFICER'S RECOMMENDATION**

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing on April 16, 2007 through April 18, 2007. Respondent Fredric Sanai did not appear at the hearing. Disciplinary Counsel Linda B. Eide and Scott G. Busby appeared for the Washington State Bar Association (the Association).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Amended Formal Complaint filed by Disciplinary Counsel charged Fredric Sanai (Fredric) with the following counts of misconduct:

Count 1 – filing multiple, meritless post-dissolution motions and/or other requests for relief in the trial and appellate courts, in violation of Rules of Professional Conduct (RPC) 3.1 and/or RPC 3.2 and/or RPC 4.4 and/or RPC 8.4(d).

Count 2 – filing and/or preparing lis pendens notices to cloud title to real property ordered

lc

sold under his parents' dissolution decree and/or filing additional litigation used as a basis for filing additional lis pendens notices and/or otherwise attempting to delay or impede the sale of property ordered sold under the dissolution decree, in violation of RPC 3.4(c) and/or RPC 8.4(j) and/or RPC 4.4 and/or RPC 8.4(d) and/or RPC 8.4(a).

Count 3 – suing the judges and the court commissioner who denied his post-dissolution motions and/or other requests for relief, in violation of RPC 3.1 and/or RPC 4.4 and/or RPC 8.4(d).

Count 4 – signing and/or filing lis pendens notices in violation of the May 15, 2003 federal court order, in violation of RPC 8.4(j) and/or RPC 3.4(c) and/or RPC 8.4(d).

Count 5 – filing defamation actions against Sassan Sanai, MD (Sasson), William Sullivan (Sullivan) and Marsh, Mundorf, Pratt, Sullivan and McKenzie (MMPSM) in state and federal court, while ELC 2.12(b) or its predecessor RLD 12.11(b) provided that communications to the Association are privileged and "no lawsuit predicated thereon may be instituted against any grievant," in violation of RPC 3.1 and/or RPC 8.4(*l*) and/or RPC 4.4 and/or RPC 8.4(d).

Count 6 – failing to serve other parties to the action with copies of his subpoena for records from Redmond General Insurance Agency, in violation of RPC 3.4(c) and/or RPC 8.4(d).

Count 7 – filing similar claims multiple times and/or in multiple jurisdictions and/or by making multiple requests for similar relief and/or failing to appear for deposition and/or otherwise prolonging the proceedings, in violation of RPC 3.2 and/or RPC 4.4 and/or RPC 8.4(d).

Count 8 – filing an action and/or appeal seeking to relitigate the dissolution decree property distribution and using the partition action as the basis for yet another lis pendens filing

clouding title to the real property ordered sold under the decree, in violation of RPC 3.1 and/or RPC 3.2 and/or RPC 3.4(c) and/or RPC 8.4(j).

Count 9 – repeatedly violating court orders or rules and/or repeatedly filing pleadings, motions, appeals or other papers without merit and/or filing similar claims in multiple forums and/or otherwise delaying enforcement of his parents' dissolution decree and/or forcing his father to defend in multiple courts on multiple grounds, in violation of RPC 8.4(n).

Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing Officer makes the following:

FINDINGS OF FACT

1. Respondent was admitted to the practice of law in the State of Washington on June 13, 2002, and in Oregon on May 18, 1998.

FACTS REGARDING THE DISSOLUTION

2. In January 2001, Fredric's mother, Viveca Sanai (Viveca), filed for dissolution from her husband of forty years, Sassan, under Snohomish County Superior Court Cause No. 01-3-00054-5. The couple had five surviving adult children, two sons, Fredric and Cyrus Sanai (Cyrus), both lawyers, and three daughters, Ingrid Sanai Buron (Ingrid), Daria Sanai (Daria) and Astrid Sanai (Astrid).

3. Robert Prince (Prince) represented Viveca. Kenneth Brewe (Brewe) represented Sassan until September 13, 2001, when Sullivan of MMPSM replaced him.

4. Following a November 2001 trial before the Honorable Joseph A. Thibodeau, on April 15, 2002, Judge Thibodeau entered Findings of Fact and Conclusions of Law (FFCL) and a Decree of Dissolution. He named the couple's accountant, Philip Maxeiner as "special master"

and required him "to list the family home and the vacant lot located on Talbot Road immediately." Each party would receive half the proceeds from the real estate sales. EXs 5, 6.

5. On April 26, 2002, Viveca filed a pro se Notice of Appeal under Court of Appeals Cause No. 503740-I challenging the FFCL and the Decree. She also filed a "Notice of Supersedeas Without Bond." EX 3 (Docket) at sub-number 254.

6. On May 15, 2002, John and Linda Neimi signed a full price Purchase and Sale Agreement for the vacant lot. Viveca's actions prevented a planned June 2002 closing. EXs 16, 41 (Neimi Declarations).

7. After Viveca's attempted supersedeas without bond, Judge Thibodeau issued an order requiring $50,000 and $72,000 bonds to stay the sale of the vacant lot and family home. EX 10.

8. Viveca responded with supersedeas bonds of a purported private surety. Sassan objected.

9. Fredric obtained his license to practice law in Washington so that he could represent his mother. EX 175 at 2, fn. 1. At a June 25, 2002 hearing, when Fredric first appeared for her, Judge Thibodeau required cash or commercial surety bonds and ordered the stay lifted on the vacant lot sale unless Viveca posted the required bond by July 2, 2002. EX 20.

10. Viveca did not post the required bond. Instead, on July 2, 2002, Fredric filed a "Lis Pendens Notice" against the lot in the dissolution action. EX 22. It was recorded the same date under No. 200207020603. EX 2 (Title Report) at 95.

11. In addition, on June 28, 2002, Fredric wrote to the Neimis as Viveca's "co-counsel" claiming Maxeiner "has no legal authority to sell the property" and promising that "[a]ny attempt

to drag my client [Viveca] into litigation will receive an appropriate response." EX 21. On July 5, 2002, Fredric filed a Motion for Reconsideration of the June 25, 2002 Order, which continued the stay on the lot sale. EX 23, EX 20 at 2.

12. Fredric also signed a "First Amended Lis Pendens" recorded August 30, 2002 under No. 200208300704 against the lot, and another recorded August 7, 2002 under No. 200208070472 against the house. EX 2 at 99, 102.

13. Fredric's lis pendens filings against the lot kept the Neimis from obtaining title insurance and blocked their anticipated closing on the lot. Since making their $325,000 full price offer for the vacant lot in May 2002, their $15,000 earnest money remained with the realtor. The Neimis had "cashed in sufficient investments to pay the purchase price in full without the need to secure financing." They remained ready to close the sale at any time. However, they wanted to build on the lot. To secure financing for the construction, they needed title insurance. The title insurance company would not issue a policy "so long as the lis pendens is in existence." EXs 41, 42 (Neimi and Purfeerst Declarations).

14. On July 30, 2002, Fredric filed a motion for an order to show cause why a new trial should not be granted based on "new evidence" that Sassan had wiretapped conversations from the family home.

15. On August 19, 2002, Fredric filed a Motion for Permission to File Audiotape, Protective Order, and Order Sealing Audiotapes. He claimed that Viveca had recently discovered tape recordings "regarding Respondent's medical practice and patients." EX 25 at 2. That same day, he filed a Motion for Protective Order and Order to Seal Court File and Motion for Sanctions Under CR 11 And/Or Terms. EX 26. He sought sanctions against Brewe for his

August 2001 submissions to the court in opposition to Viveca's then pending request to continue the trial date due to her health. Fredric noted the sanctions motion for September 20, 2002. EX 28.

16. On September 11, 2002, Fredric responded to Sullivan's motion to disqualify him by attacking Sullivan. EX 29.

17. Brewe responded to Fredric's motion for sanctions against him citing the lack of legal and factual support for the motion. Brewe noted that the motion was not filed promptly after the allegedly offending conduct as required and that Fredric failed to confirm the September 20, 2002 motion hearing. Brewe moved for sanctions against Fredric. EXs 30, 32, 33.

18. Sassan moved to strike the lis pendens filed by Fredric. On September 20, 2002, Fredric opposed that motion and sought sanctions.

19. At a September 27, 2002 hearing, Judge Thibodeau called Fredric's lis pendens filing "a misuse of that statutory scheme, because you have an adequate remedy at law." EX 37 (transcript). Judge Thibodeau's order on this issue required Viveca to lift the lis pendens unless the Court of Appeals issued a stay. It prohibited Viveca or Fredric from filing another lis pendens "in this lawsuit related to the undeveloped lot." It also prohibited Viveca or Fredric from "taking any further action to delay or obstruct the sale of the vacant lot." EX 35.

20. Judge Thibodeau also disqualified Fredric immediately from representing Viveca, EX 34 (Order), citing, among other things, "this record" and that "[h]e's actually bringing more heat to this case than anything else." EX 37 (transcript).

21. Another September 27, 2002 order denied Fredric's motion for a new trial; denied his motion for a protective order, denied his motion to disqualify Sullivan and denied Fredric's

motion for reconsideration regarding bonds, except it allowed Viveca to remain in the family home without bond, pending appeal. EX 36. The Court awarded Sassan $1,000 in terms based on Fredric's protective order motion, which Judge Thibodeau described in his oral ruling as "frivolous." EX 37.

22. On October 11, 2002, Judge Thibodeau found Fredric's motion for sanctions against Brewe "frivolous" and awarded $500 in terms under Rule 11 of the Rules of Civil Procedure (CR). EX 38.

23. I find the motion against Brewe was frivolous for the reasons stated in Brewe's response to the motion and that Fredric brought the motion to embarrass and burden Brewe and Sassan.

24. Viveca filed a "pro se" Notice of Appeal as to the October 11, 2002 and September 27, 2002 orders, EX 39, which the Court of Appeals eventually assigned Cause Nos. 51303-6-I and No. 51707-4-I. See EX 94.

25. As outlined in Sullivan's November 6, 2002 Motion asking Judge Thibodeau to execute a release of the lis pendens as soon as the Court of Appeals ruled, EX 40, Fredric filed many motions in the Court of Appeals seeking to block the vacant lot sale. None succeeded.

26. Commissioner Ellis denied Fredric's June 26, 2002 motion, EX 67, on June 28, 2002. EX 68 ("Viveca may not unilaterally determine that no bond is necessary and then proceed as if no bond is required....") Ellis found Fredric presented "no conceivable basis" for his requested terms of $20,000 and no demonstrated basis for emergency relief. On July 1, 2002, a panel of judges denied Fredric's motion of that date to modify Commissioner Ellis's ruling. EXs 69, 70.

27. Commissioner Verellen denied Fredric's October 3, 2002 motion the next day, noting that the motion failed to demonstrate that the injury from sale of the lot outweighed the injury from the loss of the sale to the currently interested purchaser. EXs 73, 74.

28. Commissioner Verellen denied Fredric's October 7, 2002 "reapplication" motion that same day. Again, he pointed out that "the key to a stay is a balancing of the relative harms" and the "voluminous materials" failed to establish that the vacant lot was unique, that the price was below fair market value or that Viveca would be harmed if the proceeds were deposited with the special master. EXs 75, 76 at 2.

29. Commissioner Craighead denied Fredric's October 16, 2002 motion and October 21, 2002 "supplement" on November 4, 2002. Citing the Rules on Appeal (RAP), she found that "the motions are not properly before me" and that "[c]ounsel misunderstands the appellate process." EXs 77, 80, 84 at 1, 2. Nevertheless, Fredric filed an additional motion on November 8, 2002, EX 85, which was denied by a panel of judges on February 11, 2003. EX 95.

30. Fredric also challenged his disqualification by motions in the Court of Appeals. EXs 73, 85, 90. None succeeded. EXs 84, 85, 96. He continued to seek protective orders or sanctions in connection with his father's alleged improper disclosure of health care information by motions in the Court of Appeals. EXs 71, 79, 85, 92. None succeeded. EXs 71, 84, 95, 96. He repeated motions to seal the file in the Supreme Court, EX 119 and See EX 112 (Docket at July 1, 2003). None succeeded. EXs 122, 123.

31. On December 20, 2002, citing the "continuing appeals of every ruling of this court...greatly prolonging the matter and costing substantial attorney's fees," Judge Thibodeau sanctioned Viveca $2,500 to be paid to Sassan from Viveca's share of the net proceeds from the

sale of the vacant lot. The December 20, 2002 order also provided that the Court would issue a release of the lis pendens once the Court of Appeals ruled. EX 44. Fredric as "Appellate Attorney for Petitioner Viveca Sanai" filed a Notice of Appeal from that ruling. EX 45.

32. Following the February 11, 2003 Court of Appeals order that denied Fredric's requested stay of the trial court order requiring the lis pendens release, on February 13, 2003, Judge Thibodeau released Fredric's July 2, 2002 lis pendens recorded under No. 200207020603.

33. As Sullivan traveled the short distance from the Snohomish County Superior Court to the Auditor's Office, he passed Viveca. The release he had just obtained was recorded at 4:18 p.m. on February 13, 2003. He asked the auditor's office staff to check for recent filings against the vacant lot and discovered a new lis pendens signed by Cyrus citing the second federal wiretap case discussed below and recorded at 4:10 p.m. that day. EX 2 at 107, 138. The second federal wiretap case (02-02560) was filed by Cyrus and Fredric as the only plaintiffs on December 24, 2002, EX 274, after Fredric had lost several motions in the Court of Appeals attempting to stay the lot sale.

34. On January 27, 2003, Fredric sought discretionary review of the lis pendens issue. EX 91. On March 11, 2003, a Court of Appeals panel determined the issue was not appealable and did not meet the requirements for discretionary review under the RAP. EX 96.

35. Meanwhile, at the trial court, on March 10, 2003, Judge Thibodeau ordered Viveca to vacate the family home by May 10, 2003, or face sanctions of $250 per day. He awarded Sassan $1,000 in terms against Viveca to be deducted from her share of the net proceeds from the sale of the lot or home. EX 48.

36. The sanction for Viveca's holdover in the family home remains to be determined.

Prince estimated the amount at $50,000. EX 62 at 21 (Prince).

37. On April 14, 2003, Fredric sought direct review of the March 10, 2003 order in the Washington Supreme Court. EX 113. On May 5, 2003, Fredric "refiled" the motion. EX 114 at 2.

38. On May 7, 2003, Supreme Court Commissioner Crooks denied relief referencing not only that "the children have taken up arms against the father" in a "continuous stream of litigation," but also that Fredric provided only a "sparse record." The May 7, 2003 Ruling asked the parties to brief whether Fredric could continue to represent Viveca given that Judge Thibodeau's disqualification order had never been stayed. EX 115A. Fredric's motion seeking clarification was denied. EX 117.

39. On June 10, 2003, Commissioner Crooks denied another motion for supersedeas and motion to modify. EXs 120, 121, 122. He also ruled that because the trial court disqualification order was never stayed, Fredric lacked authority to act for Viveca and accordingly, he dismissed the pending motions. Fredric moved to modify that ruling. See EX 112 (docket at July 10, 2003). On September 5, 2003, Department II of the Supreme Court unanimously denied all pending motions and sanctioned Fredric and Viveca $1,000.

40. On December 22, 2003, the Court of Appeals decided the main appeal, affirming Judge Thibodeau except that firearms awarded to a third party were awarded to Sassan as bailee for a third party. EX 104. Citing the "one and one half years of posttrial litigation and motions," which the Court characterized as "inappropriate, untimely, and unduly repetitive" and errors in Viveca's opening brief (signed by Fredric, EX 97), the Court imposed $10,000 in sanctions against Viveca for her "extreme intransigence" and for "abusing the appellate process."

41. The Washington Supreme Court declined discretionary review of the appeal and the United States Supreme Court denied certiorari. EXs 104 at 9, 107.

42. I find the motions for protective order or to seal the file allegedly brought to protect the confidentiality of Viveca's health care information were frivolous for the same reasons that Fredric's motion against Brewe was frivolous. Although Fredric acted as Viveca's counsel until disqualified, he never represented the private surety. While his avowed purpose in repeatedly bringing such motions was to protect the confidentiality of Viveca's and the private surety's health care information, Fredric repeatedly put the information in the public record to do so. Fredric brought the protective order and like motions regarding Viveca's and the private surety's health care information to embarrass and burden Sassan.

43. Fredric's often repeated motions for supersedeas or related relief were brought to delay implementation of the decree and to burden Sassan. In addition, he did not articulate an appropriate reason for claiming lis pendens relief under RCW 4.28.320 for the reasons stated by Judge Thibodeau, the Court of Appeals and Judge Zilly. I find they were frivolous. He argued that Viveca should be allowed to use a private surety.

44. Fredric's post judgment motion practice in the Snohomish County Superior Court, the Court of Appeals and the Washington State Supreme Court violated practice norms.

45. In all instances, Fredric acted intentionally. He caused actual serious harm to his father, who was forced to defend the plethora of motions. He burdened the courts at every level with his frivolous filings. He delayed resolution of his parents' dissolution. In deciding the main appeal, the Court of Appeals sanctioned Viveca $10,000 for "extreme intransigence" and for Fredric's "inappropriate, untimely and unduly repetitive" motions.

46. In the spring of 2003, following the Court of Appeals refusal to supersede or stay the vacant lot sale, Fredric, as Viveca's lawyer, filed a Complaint in King County against Sassan and his professional services corporation, Internal Medicine and Cardiology, Inc. (IMC) seeking to obtain the vacant lot and house for Viveca (the partition action). EX 145.

47. Fredric used the partition action as the basis for additional lis pendens filings including an Amended Notice of Lis Pendens signed by Fredric on July 1, 2003 and recorded on July 7, 2003 under No. 200307070619. EX 2 at 166.

48. While the Neimis had abandoned the lot purchase in April 2003, EX 120 at 32, a new deal for sale of the vacant lot had been set to close on or about July 18, 2003.

49. On August 11, 2003, Judge Thibodeau released the lis pendens, held Viveca in contempt of court, and ordered her to pay $5,000 for obstructing the lot sale by filing the lis pendens signed by Fredric and recorded under No. 200307070619. EX 50. A sale on the vacant lot was recorded the next day. EX 2 at 46.

50. Viveca appealed the August 11, 2003 contempt finding and lost. The Court of Appeals rejected her argument that only the court in which the underlying action is filed may release the lis pendens. It noted that RCW 4.28.320 does not so state, and Viveca cited no authority in support of her position. Also, the partition action was filed in the wrong county [by Fredric] and thus could not affect title to property in Snohomish County. Finally, the Court cited Judge Thibodeau's order prohibiting Viveca or her counsel from taking "any further action" to delay the vacant lot sale, and the superior court's inherent power to enforce its own orders. EX 126 (Sanai v. Sanai, 127 Wash. App. 1013 (Div. I, May 2, 2005)(unpublished opinion)).

51. On May 26, 2005, Judge Thibodeau hoped that a hearing that date would resolve

remaining dissolution issues given that a sale was pending on the family home. Instead, he recused himself from the case. EX 62 at 21, 22. He believed that Fredric, Viveca and Cyrus had acted "in concert" and "in bad faith." EX 62 at 16, 23.

52. In June 2005, the Auditor's Office recorded the sale of the family home. EX 2 at 16.

53. Prince withdrew from representing Viveca in the trial court in April 2006. He had never represented her on appeal. EX 83. Following a period when Viveca represented herself and a court order forbid Fredric or Cyrus from representing her, EX 64, Michael Bugni appeared for Viveca.

54. A hearing to resolve remaining dissolution issues and proceeds distribution is set for August 2007. Viveca has been sanctioned over $250,000 in the federal wiretap litigation described below. At least one of the parties entitled to sanctions in the federal wiretap case has requested and received an order that the party must receive notice and be allowed to participate in any proceedings to distribute remaining dissolution assets. EX 64.

55. I find that Fredric acted intentionally in signing and/or filing lis pendens and that he caused serious actual harm in that he not only delayed resolution of his parents' dissolution, but he also thwarted the Neimis efforts to buy the vacant lot after they made a full price offer and liquidated assets to satisfy their obligations at the anticipated closing. He delayed the closing for the subsequent purchaser in the summer of 2003. He brought the lis pendens with no substantial purpose other than to delay the lot sale or burden his father or the prospective purchasers of property ordered sold under his parents' dissolution decree. He violated practice norms.

56. On September 27, 2002, Judge Thibodeau prohibited Viveca or Fredric from filing

another lis pendens or taking any further action to delay or obstruct the sale of the vacant lot. Fredric's subsequent lis pendens filings against the vacant lot on May 20, 2003 and July 7, 2003 knowingly and willfully disobeyed Judge Thibodeau's order. Judge Thibodeau held Viveca in contempt of court. Fredric assisted in the contemptuous conduct by filing the partition action that served as the basis for further lis pendens and by signing and/or filing the lis pendens notices. He also assisted in contemptuous conduct by joining Cyrus in filing the second federal wiretap case, which Cyrus used as the bases for still more lis pendens filings.

FACTS REGARDING LAWSUIT AGAINST JUDICIAL OFFICERS

57. Four days after Justice Alexander's September 5, 2003 Order dismissing Fredric's Supreme Court motions, Fredric and Viveca filed suit under 42 U.S.C. §1983. See EX 130 (Docket for Case No. C03-2781C in the United States District Court for the Western District of Washington at Seattle). EX 130 (Docket).

58. Fredric's First Amended Complaint, filed September 16, 2003, named as Defendants Commissioner Crooks, Snohomish County Superior Court Judge Thibodeau, and Court of Appeals Judges Applewick, Baker and Ellington. He alleged civil rights violations based on Judge Thibodeau's decision disqualifying Fredric and the other Defendants' denial of requests for relief from that decision. He sought "an injunction to compel the Defendants to allow Viveca to be represented by Fredric Sanai...." EX 131 at 11.

59. Also, on September 16, 2003, Fredric and Viveca filed an Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction (TRO) again seeking to stay "all proceedings in the dissolution action" and to effectively overturn the rulings disqualifying Fredric from representing his mother. As he admitted in the "Facts" section of that Application,

"[t]his action arises from the post-final judgment proceedings in a divorce case." EX 132 at 3.

60. In his attached Declaration, EX 132 at 25, Fredric identifies himself as not only a Plaintiff, but also as "counsel to Viveca Sanai."

61. The Washington State Attorney General's Office appeared for the jurists and moved to dismiss the complaint and the original and subsequent TRO motions.

62. On September 24, 2003, the Honorable Robert S. Lasnik denied the first TRO motion, noting that "Plaintiffs' chance of prevailing on the merits is minimal." EX 133 at 5.

63. On October 2, 2003, Fredric moved for summary judgment and again included a plea for injunctive relief. EX 134. Defendants' Opposition included a cross motion to dismiss. EX 135.

64. Before the Court decided those motions, on December 1, 2003, Fredric filed yet another Ex Parte Application of Fredric Sanai and Viveca Sanai for Temporary Restraining Order and Motion for Preliminary Injunction admitting "[t]his motion is a re-application for a temporary restraining order and motion for restraining order [sic] which was made to this Court and denied by Judge Lasnik on September 24, 2003." EX 136 at 2.

65. On December 12, 2003, Chief United States District Judge John C. Coughenor dismissed the case for lack of subject matter jurisdiction. He also dismissed the pending injunction request(s) and concluded as follows:

> In sum, Plaintiffs' attempt to obtain review of unfavorable decisions of the Washington state courts by wrapping their state law-based challenges in the fabric of federal constitutional claims must fail under the Rooker-Feldman doctrine. The fact that Plaintiffs did not present, although they could have, their current constitutional arguments to the state court judges does not alter the application of Rooker-Feldman's jurisdictional bar.

EX 137 at 11 (footnote omitted).

66. On December 15, 2003, Fredric moved for reconsideration. EX 139. On January 8, 2004, Fredric signed a Notice of Appeal as "Counsel for Viveca Sanai & pro se." EX 140.

67. Despite the earlier rulings denying his requests for a TRO and despite the court's December 12, 2003 order dismissing the case, on January 16, 2004, Fredric again requested a TRO pending appeal. EX 141.

68. "Despite the continuing colorfulness of Plaintiffs' arguments," EX 142 at 1 (January 23, 2004 Order), Judge Coughenor denied Fredric's Motion for Reconsideration and his fourth TRO bid. He concluded: "Here, Plaintiffs seek nothing more than review of the disqualification orders issued by the state court judges. Clearly, this Court is not a proper forum for such de facto appellate challenge." Id. at 11.

69. The Ninth Circuit assigned the case No. 04-35041. On August 17, 2005, a Ninth Circuit panel issued a Memorandum Opinion deciding several pending Sanai matters.

70. It held that the district court properly applied the Rooker-Feldman doctrine to dismiss Fredric's and Viveca's challenge to the state court's disqualification of Frederic Sanai as counsel for Viveca Sanai. Sanai v. Sanai, 141 Fed.Appx. 677 (9th Cir. August 17, 2005) (unpublished opinion), cert. denied 126 S.Ct. 2022, 74 USLW 3475 (May 15, 2006). EX 143.

71. The Rooker-Feldman doctrine bars federal courts from acting as de facto appeals courts from state court decisions. "If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, Rooker-Feldman bars subject matter jurisdiction in federal district court." Noel v. Hall, 341 F.3d 1149, 1164 (9th Cir. 2003).

72. I find that the suit against the judges was frivolously asserted. Fredric identified himself as not only a plaintiff, but also as Viveca's lawyer. I find that he brought the action to embarrass and burden the judicial officers sued. His TRO motions were without merit and designed to delay the dissolution proceedings. Finally, the litigation was outside practice norms.

73. I find that Fredric acted intentionally and that he caused actual serious harm in that his repeated TRO and other filings burdened the courts and the defendant judicial officers with meritless claims.

FACTS REGARDING STATE AND FEDERAL WIRETAP LAWSUITS

74. California Litigation. On March 16, 2001, while the dissolution action remained pending, Fredric, Cyrus, Viveca, Ingrid and Daria sued Sassan in Los Angeles County Superior Court under Cause No. BC246941 for over $1,000,000 alleging, among other things, that Sassan had invaded their privacy by wiretapping their conversations from the family home. The Complaint identified Sassan as a Washington State resident at all relevant times. EX 167.

75. On July 12, 2001, the trial court granted Sassan's motion to quash the summons against him based on the California court's lack of personal jurisdiction over him. EX 168 (minute entry).

76. Fredric and other Plaintiffs appealed that decision and lost. EX 169 (Sanai v. Sanai, 2003 W.L. 733994 (Cal. App. 2 Dist., March 4, 2003) (unpublished opinion).

77. Washington State Court. On August 20, 2002, while the California case was on appeal, Fredric, Cyrus, Viveca, Daria and Ingrid sued Sassan, IMC and IMC employee Mary McCullough in King County Superior Court under Cause No. 02-2-23981-1, alleging wiretapping. EX 171 (Complaint).

78. On October 4, 2002, after a hearing, the Honorable Palmer Robinson issued an Order on Show Cause allowing Plaintiffs to obtain a Writ of Attachment against $50,000 of Sassan's interest in the net proceeds from the vacant lot or family home sale, provided that Plaintiffs first obtain a commercial surety bond for $200,000. EX 175. Plaintiffs never posted a bond or obtained a Writ of Attachment.

79. As part of the Order on Show Cause, the Court noted that while Plaintiffs claimed over $6 million in damages and sought a pre-judgment writ of attachment for $12 million they sought to have the writ conditioned only on "their giving an unsecured 'personal undertaking' in the amount of $3,000." EX 175 at 2.

80. After hearing testimony from Fredric, Viveca and Cyrus, Judge Robinson found "no evidence presented that the tapes had ever been played for or listened to by any third person" and "no evidence that any telephone calls to, from, or within Sassan's place of business had been intercepted or tape recorded." The asserted basis for venue in King County had been that improper wiretaps had been conducted at IMC, which is located about one-quarter mile within King County. The wiretapping at IMC allegation had not appeared in the California complaint. EX 167.

81. On October 18, 2002, Plaintiffs filed a First Amended Complaint. It added William Sullivan (Sullivan) and Marsh, Mundorf, Pratt, Sullivan and McKenzie (MMPSM) as defendants. EX 176. Specifically, the Third Cause of Action alleged all defendants had violated Ch. 70.02 RCW by disclosing confidential health care information about Viveca. This repeated allegations Judge Thibodeau had rejected only days earlier in the dissolution case. In fact, the Snohomish County Superior Court's October 11, 2002 order had sanctioned Fredric and Viveca

$500 for bringing such "frivolous" allegations against Sassan's prior lawyer.

82. The amended complaint also added defamation claims against Sassan, Sullivan and MMPSM based on grievances Sullivan and Sassan had filed against Fredric with the Association.

83. On November 21, 2002, the Association wrote to Fredric advising him that Rule 2.12(b) of the rules for Enforcement of Lawyer Conduct (ELC) [formerly Rule 12.11(b) of the Rules for Lawyer Discipline (RLD)] provides that communications to the Association are "absolutely privileged and no lawsuit predicated thereon may be instituted against any grievant, witness, or other person providing information." EX 182 (Ende letter).

84. At Defendants' request, the King County Superior Court transferred the case to Snohomish County Superior Court, EX 177, where it received Cause No. 03-2-06858-4.

85. On May 8, 2003, Plaintiffs filed a Second Amended Complaint under the Snohomish County case number. EX 183.

86. By this time, Plaintiffs had filed wiretapping allegations against Sassan and defamation allegations against Sassan and Sullivan in federal court, too. The amended complaint in state court retained the factual predicate for the wiretapping and defamation claims, but noted: "Plaintiffs are pursuing their causes of action for illegal wiretapping in Federal court." EX 183 at paragraph 22. See also EX 183 at paragraph 30 (similar notation regarding defamation claims). That left only Viveca's claims. However, paragraph 49 of the amended compliant alleged that Viveca had assigned a portion of her invasion of privacy claim for disclosure of allegedly confidential health care information to Fredric and the other Plaintiffs.

87. On May 9, 2003, Snohomish County Commissioner Bedle granted Sullivan $3,000 in terms against Viveca and Fredric under CR 41 and 15. EX 184. After United States District

Court Judge Zilly told Plaintiffs that they must dismiss the state court wiretap claims to lift the stay he had imposed in the federal wiretap litigation described below, Plaintiffs initially tried to amend their state court complaint to delete certain claims.

88. On August 5, 2003, the parties filed a Stipulation and Agreed Order of Dismissal. EX 186. Fredric and others filed a Notice of Appeal citing both the terms imposed and the agreed dismissal order. EX 187. The Court of Appeals assigned case number 764123. EX 188 (Docket).

89. On October 18, 2004, the Court of Appeals held that fees should not have been awarded under CR 15 or CR 41. However, the lower court had not considered whether an award of fees might be proper under CR 11. The case was reversed and remanded to allow Defendants to seek sanctions under CR 11. EX 189 (Sanai et al v. Sanai et al, 123 Wash. App. 1046, 2004 WL 2335798 (Div. I 2004) (unpublished opinion), rev. den., 154 Wn. 2d 1021 (July 12, 2005). Plaintiffs' petition for review in the Supreme Court had received Case No. 764123. EX 190 (Docket). Sullivan concluded it "didn't make sense" for Sassan to incur further attorney's fees to pursue CR 11 sanctions on remand.

90. First Federal Wiretap Case (02-02165). On October 18, 2002, the same date they filed a First Amended Complaint in the King County wiretap action and while the California wiretap appeal remained pending, Fredric, Cyrus, Viveca, Ingrid and Daria sued Sassan and others in federal court under United States District Court for the Western District of Washington at Seattle Cause No. 02-02165.

91. Among other things, they alleged illegal wiretapping by Sassan. Plaintiffs sought damages exceeding $16,000,000. Fredric represented Ingrid from at least May 15, 2003, EX 206

at 2, until disqualified. The case was assigned to the Honorable Thomas S. Zilly.

92. Plaintiffs immediately sought injunctive relief to "freeze assets." See, e.g, EX 191 (Docket in 02165 at 11/22/02). Defendants requested that the federal court abstain from exercising jurisdiction or stay the federal case until the parallel state court litigation concluded. EX 196 (Defendants' Motion Requesting This Court's Abstention From Exercising Jurisdiction and for a Stay of These Proceedings).

93. Second Federal Wiretap Case (02-02560). Before the Court could rule on that motion, on December 24, 2002, Fredric and Cyrus, as the only Plaintiffs, filed another complaint under United States District Court for the Western District of Washington at Seattle Cause No. 02-02560. EX 273 (Docket), EX 274 (Complaint).

94. The case was assigned to the Honorable Robert S. Lasnik, who reassigned it to Judge Zilly because it was related to 02-02165. EX 273 (Docket at sub-number 10).

95. Consolidated Federal Wiretap Case (02-02165). Judge Zilly consolidated the cases and ordered that all motions or other documents must be filed under 02-02165. EX 273 (Docket at 15, 60 (Minute Orders)). He rejected the request that the cases be consolidated under the higher cause number [and thus assigned to Judge Lasnik]. EX 201.

96. Judge Zilly denied Plaintiffs any injunctive relief. EX 198 (December 17, 2002 Transcript). He explained:

> The parties for whatever reason cannot abide by the rulings of the eminently qualified trial judge in Snohomish County, and this court is not at this point going to interfere by entering a preliminary injunction that would in effect have the force and effect of disrupting and otherwise interfering with the rulings of the trial judge in Snohomish County.

Id. at p. 38.

97. As requested by Defendants, Judge Zilly issued a stay. EX 197 (Minute Order). On January 22, 2003, Judge Zilly granted the motion to abstain or stay as to the illegal wiretapping and emotional distress claims given parallel state court litigation. EX 199 (Minute Order).

98. After Judge Zilly denied Plaintiffs' attempts to enjoin the sale of the vacant lot in the first filed federal wiretap case (02-02165) as described above, then Cyrus used the second filed federal wiretap case (02-02560) as the basis for lis pendens notices against the lot filed February 13, 2003 under Auditor's Number 200302130755, filed March 7, 2003 under Auditor's Number 200303070238 ("Amended Lis Pendens") and April 21, 2003 under Auditor's Number 200304210011 ("Second Amended Lis Pendens"). EX 2 (Title Report) at 138, 142, 147. Cyrus signed and filed another lis pendens on March 7, 2003 under Auditor's File No. 200303070237 against the house. It also cited the 02-02560 case filed by Fredric and Cyrus.

99. After Sassan discovered the February 13, 2003 filing, he moved for its release. EX 200. On April 18, 2003, Judge Zilly ordered the release of the February 13, 2003 lis pendens filed under Auditor's No. 200302130755. EX 204. Three days later Cyrus filed another lis pendens.

100. At a hearing on May 15, 2003; after argument on the pending state and federal wiretap claims, the parties stipulated on the record that Plaintiffs would dismiss the Snohomish County wiretap case and file a Third Amended Consolidated Complaint by June 6, 2003 to consolidate not only the two federal cases, but also any claims remaining under the state court wiretap case. EX 206 (May 15, 2003 Transcript at 27 et. seq.).

101. In addition, Sassan asked Judge Zilly to release the additional lis pendens notices filed by Cyrus. Fredric was present at the May 15, 2003 hearing when Judge Zilly announced:

I'm going to grant the order [striking lis pendens]. The statute, [RCW] 4.28.325 permits filing of a notice of lis pendens in a, quote, action affecting title to real property at the time of filing the complaint or any time thereafter, end of quote. I'm paraphrasing.

But basically, the complaint as alleged in the equitable claim is, in my opinion, not an action affecting real property. And I'm just not satisfied that the representations that have been made would support the Court authorizing a lis pendens.

...

Well, I'm ordering each of the plaintiffs in this action who I have jurisdiction over to cease and desist from any further action to delay or obstruct the sale of either of those properties or filing any further lis pendens.

Id. at 43-44.

102. Plaintiffs immediately appealed the lis pendens release order. EX 191 (Docket at 136). On September 22, 2003, the Ninth Circuit Court of Appeals dismissed the appeal for lack of jurisdiction. EX 191 (Docket at sub-number 240).

103. The Court's written Order on Defendant's Motion to Release Three Lis Pendens canceled and released three lis pendens signed by Cyrus, and provided as follows:

Plaintiffs herein, and each of them, are prohibited from filing any new Notice of Lis Pendens affecting the vacant lot owned by Dr. Sassan Sanai and Viveca Sanai, having Assessor's Property Tax Parcel Account No. 27040700104100 and having that legal description attached hereto as Exhibit B.

Each of the plaintiffs herein shall cease and desist from taking any further action whatsoever to delay or obstruct the sale of the aforesaid real property.

EX 207 (May 19, 2003 Order) (emphasis added). Fredric filed a Motion for Clarification, which Judge Zilly denied. EX 209, 210.

104. Just five days after the May 15, 2003 hearing, on May 20, 2003, Fredric recorded a lis pendens under Auditor's File No. 2003005200939 against the vacant lot based on a Notice of Lis Pendens he signed on May 20, 2003 as "Attorney for Viveca Sanai" citing a King County

action allegedly filed April 20, 2003.

105. The King County partition case described below was actually filed May 20, 2003, EX 145, the same date as the lis pendens. EX 2 (Title Report at 156).

106. In further defiance of the Court's May 19, 2003 Order, on July 7, 2003, Fredric recorded another lis pendens against the vacant lot under Auditor's File No. 200307070619 based on an Amended Notice of Lis Pendens signed by Fredric on July 1, 2003, citing King County Superior Court Cause No. 03-2-25718-4SEA, the partition case. EX 2 (Title Report at 166).

107. Sassan moved for contempt and to release the lis pendens filings. The Court deferred the matter and set oral argument for September 26, 2003. EX 191 (Docket at sub-number 228).

108. During that oral argument, Sullivan outlined Plaintiffs' inconsistent positions in different courts and asked for contempt sanctions against Fredric and Viveca for filing the notices of lis pendens after Judge Zilly's May 19, 2003 order. Fredric did not appear. EX 218 (Transcript September 26, 2003).

109. The Court outlined its decision as follows:

> This court held a hearing on May 15th. At that time I did enjoin the plaintiffs from filing lis pendens.
>
> The record is clear that on May 29th the plaintiffs— I think it was May 20th, actually—they filed a new King County action. The action was described as an extension of the divorce between the Sanai's.
>
> In connection with that proceeding, they filed an ex parte motion to compel discovery. They argued in the King County action that the partition action was an independent action and not a continuation of the divorce proceedings. They went into Snohomish County and they argued that it was a separate partition action, not a continuation.
>
> They have made a mockery and are making a mockery of the legal system

by making contrary arguments in one court from another, in not getting the relief they seek in one court, going to another court and seeking that relief.

...

..[T]here's a copy of the amended notice of lis pendens. It's signed by Fredric Sanai. He signs it as attorney for Viveca Sanai. It's dated July 1st. It was filed July 7th. That lis pendens was in direct violation of this court's order.

Id. at 26-27.

110. As a result of the lis pendens signed by Fredric, Judge Zilly found Fredric and Viveca in contempt of court. He sanctioned them $2,500 payable jointly and severally into the registry of court and awarded Sassan $3,400 in attorney's fees payable jointly and severally. EX 217 ([October 1, 2003] Order on Defendant Dr. Sassan Sanai's Motion for Contempt, Sanctions, and Attorney's Fees) (releasing Auditor's File Nos. 200305200939 and 200307070619).

111. Plaintiffs appealed the contempt order. See EX 191 (Docket at 269). It received Ninth Circuit Court of Appeals Case No. 03-035797. See EX 191 (Docket at 10/08/2003).

112. On April 8, 2005, the Ninth Circuit affirmed.

> The court acted within its authority when it entered the contempt order. Appellants' challenge to the contempt order under the Anti-Injunction Act is precluded by the collateral bar rule. Appellants had sufficient notice of the contemplated contempt finding.

Sanai v. Sanai, 141 Fed.Appx. 677, 678 (9th Cir. 2005).

113. On October 3, 2003, Judge Zilly declared a moratorium on new motions given the 14 motions pending at that time. See EX 191 (Docket at sub-number 274).

114. After Plaintiffs filed the June 6, 2003 amended complaint described below, they issued subpoenas to Defendants' financial institutions. Fredric signed the eight subpoenas as "Attorney for Plaintiff Ingrid Sanai Buron." See EX 212 at 16 et. seq. (Defendants' Motion for Protective Order and to Quash Subpoenas).

115. On June 20, 2003, Fredric as his sister's lawyer, issued a subpoena to the Whatcom Educational Credit Union in Bellingham, Washington, seeking "[a]ll account statements in respect of all bank accounts and credit card accounts in the name of Mary Lynn McCullough from 1/1/90 and onwards." Id. at 31.

116. In the motion papers, William Gibbs, as McCullough's counsel, included his declaration explaining that he had not received notice of the subpoena until after the credit union had been served and contacted his client, who, in turn, contacted him. Id. at 11.

117. Under Rule 45(b)(1) of the Federal Rules of Civil Procedure (FRCP) "[p]rior notice of any commanded production of documents... shall be served on each party in the manner prescribed by Rule 5(b)." Fredric did not provide prior notice as required. Judge Zilly quashed the Whatcom County subpoena. EX 213.

118. Later, after various discovery matters had been referred to a magistrate for resolution, United States Magistrate Judge Mary Alice Theiler granted the protective order relief sought by Defendants as to the other financial records that Fredric had subpoenaed and ordered him to withdraw the subpoenas. Further, she ordered Fredric to provide Defendants any documents produced and ordered Plaintiffs not to retain copies. EX 220.

119. She described the discovery sought by Fredric's subpoenas for McCullough's and Sassan's financial information as "overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence." EX 220 ([October 17, 2003] Order Granting Defendants' Motion for Protective Order Regarding Financial Discovery at 2, 3). She described the subpoenas for McCullough's financial records as "calculated to result in annoyance, undue burden and expense, and to invade [McCullough's] privacy."

120. In addition, the October 17, 2003 Order provided: "Plaintiffs are hereby ORDERED not to issue, or cause to be issued, any further or additional subpoenas for financial records or documents of the type described herein related to any party without prior approval of the Court." Id. at 4.

121. Instead of complying with the order, Plaintiffs used the documents produced under Fredric's subpoenas in the Court of Appeals and state court litigation. See EX 222 at 6. In fact, Fredric wrote: "Once Plaintiffs received the discovery, Plaintiffs were free to use it. Magistrate Judge Thieler's [sic] order to return the discovery was too late. The cat is out of the bag." EX 227 at 6 (January 31, 2004 Response to Motion for Dismissal signed by Fredric as counsel for Ingrid and pro se).

122. Despite the orders of Judge Zilly and Magistrate Judge Theiler regarding Fredric's improper subpoenas to financial institutions, on October 22, 2004, Fredric as "attorney for Plaintiff Ingrid Sanai Buron" issued a Subpoena Duces Tecum to the Redmond General Insurance Agency seeking documents related to a Replevin Bond issued by the insurer for Sassan including documents regarding the security provided by Sassan to secure the bond and how he paid for it or received credit for any refund and any documents mentioning McCullough. EX 232A.

123. The subpoena commanded the insurer to deliver requested documents to Fredric by October 29, 2004. EX 232A at 1. As noted above, FRCP 45(b)(1) requires such subpoenas to be served on opposing counsel. Once again, Fredric did not provide prior notice as required.

124. When McCullough brought a motion for sanctions against Fredric, Fredric admitted that the Defendants were not served properly with the Redmond General Insurance Agency

subpoena, but blamed his mother. She submitted a declaration stating that she became ill and that while she arranged to serve the insurer, she failed to mail copies to the parties until a number of days later. EX 236.

125. The envelope shows the copy to McCullough's counsel was not mailed until November 3, 2004, several days after the insurer's response was due, (EX 232A at 4) and after the insurer had already complied with the subpoena. EX 234 (Smith Declaration).

126. On January 3, 2005, Judge Zilly granted Defendants' motion for sanctions relating to the Redmond General Insurance Agency subpoena issued by Fredric, and he disqualified Fredric from representing his sister.

> Plaintiffs' failure to timely notify the Defendants of the subpoena duces tecum was misconduct. Fredric Sanai was acting as an Officer of the Court. Plaintiffs' attempt to blame their mother is unacceptable. The Court ORDERS that Plaintiffs shall return and/or destroy all documents and things obtained from the Redmond General Insurance Agency, or from any party, as a result of the subpoena. Those documents and things may not be used by Plaintiffs for any purpose. In addition, the Court ORDERS that Fredric Sanai may not participate as counsel in this matter. Plaintiff Ingrid Sanai Buron may no longer be represented by Fredric Sanai, and must obtain new counsel or assume pro se status.

EX 244 (January 3, 2005 Order at 3).

127. On March 10, 2005, Judge Zilly awarded McCullough $1,740 in attorney's fees against Fredric for issuing the Redmond General Insurance Agency subpoena. EX 247 (March 10, 2005 Minute Order).

128. On July 5, 2006, Ingrid withdrew as a Plaintiff and Defendants agreed to dismiss their counterclaims against her. EX 191 (Docket at 764).

129. On the June 6, 2003 deadline, Plaintiffs had filed their Third Amended Complaint (Consolidated) alleging seventeen causes of action.

130. The first two causes of action alleged wiretapping in violation of federal law and invasion of privacy against Sassan, McCullough and IMC on behalf of Fredric, Viveca, Cyrus, Ingrid and Daria. The third and fourth causes of action alleged illegal wiretapping in violation of California and Oregon law on behalf of Cyrus and Fredric, respectively. Plaintiffs' fifth cause of action alleged negligent inflection of emotional distress based on the alleged wiretapping.

131. The ninth and tenth causes of action were filed by Fredric against Sassan, Sullivan and MMPSM and repeated defamation claims citing Sullivan's and Sassan's complaints to the Association. EX 211 at 17.

132. The seventeenth cause of action alleged ERISA violations. Fredric, Cyrus and Daria claimed to be beneficiaries of the IMC benefit plan. EX 211 at 29.

133. On October 29, 2003, Judge Zilly granted summary judgment dismissing Plaintiffs' ERISA claims. See EX 191 (Docket at sub-number 331).

134. On November 3, 2003, the Court granted summary judgment of dismissal for Sullivan and MMPSM on the ninth and tenth causes of action, Fredric's defamation claims. Judge Zilly found both no genuine issue of material fact and found Sullivan's statements privileged on several grounds, including the "WSBA Communications Privilege." EX 221.

135. The Association had warned Fredric about that privilege in November 2002, EX 182. Nevertheless, Fredric had repeated the defamation claims based on the privileged statements to the Association as part of his Third Amended Complaint in June 2003. EX 211.

136. On November 17, 2003, Plaintiffs filed a Notice of Preliminary Injunction Appeal, which received Ninth Circuit Case No. 03-35932. EX 191 (Docket at 342). The Ninth Circuit dismissed the appeal. EX 290.

137. In January 2004, certain Defendants sought summary judgment dismissing additional claims and moved for sanctions based on Plaintiffs' litigation misconduct. See EX 191 (Docket at 370, 373), EX 222 (Motion), EX 223 (Gibbs Declaration), EX 224 (Keaton Declaration), EX 225 (Shultz Declaration), EX 226 (Sullivan Declaration).

138. On May 20, 2004, Fredric and other Plaintiffs filed a Motion for Leave to file a Fourth Amended Complaint. See EX 191 (Docket at sub-number 464). On July 9, 2004, Judge Zilly denied the motion. EX 229. Ten days later, Fredric and other Plaintiffs filed a new federal action repeating the claims dismissed by Judge Zilly.

139. On January 3, 2005, the Court ordered Plaintiffs to show cause why their Complaint should not be dismissed with prejudice because of their continued misconduct, disregard for orders of the Court, and bad faith litigation tactics. EX 244 (January 3, 2005 Minute Order).

140. By May 2005, a majority of the claims asserted in the Third Amended Complaint had been dismissed, leaving six claims asserted against Sassan, McCullough and IMC. On May 18, 2005, Judge Zilly dismissed more claims when he granted summary judgment motions in favor of IMC and McCullough. EX 248 at 27 (May 18, 2005 Order). In addition, the Court dismissed some claims asserted against Sassan, including defamation based on Sassan's grievance to the Association. One basis for such dismissal was that "any communications by Sassan to the WSBA were privileged." Id. at 27.

141. On July 1, 2005, Judge Zilly dismissed with prejudice any remaining claims under Plaintiffs' Third Amended Complaint for reasons set forth in the Court's order, which included the following:

> Plaintiffs' conduct in this litigation has been an indescribable abuse of the legal

> process, unlike anything this Judge has experienced in more than 17 years on the bench and 26 years in private practice: outrageous, disrespectful, and in bad faith. Plaintiffs have employed the most abusive and obstructive litigation tactics this Court has ever encountered, all of which are directed at events and persons surrounding the divorce of Sassan and Viveca Sanai, including parties, lawyers, and even judges. Plaintiffs have filed scores of frivolous pleadings, forcing baseless and expensive litigation. The docket in this case approaches 700 filings, a testament to Plaintiffs' dogged pursuit of a divorce long past.

EX 252 (July 1, 2005 Order at 2).

142. The order catalogs Plaintiffs' misconduct, including Fredric's disregard of the Court's order prohibiting further lis pendens filings, forum shopping, and Plaintiffs' discovery abuses. The court held "that Fredric Sanai's failure to properly serve the [Redmond General Insurance Agency] subpoena was willful and in bad faith." Id. at 5.

143. Plaintiffs' discovery abuses included not only the subpoenas discussed above, but also the refusal of Fredric and other Plaintiffs to appear for their depositions and to respond to written discovery. See e.g., EX 223 (Declaration of William E. Gibbs in Support of Defendants' Motion for Dismissal for Plaintiffs' Misconduct). On November 7, 2003, Fredric emailed defense counsel that depositions scheduled for the following week would be "impossible from a scheduling point of view." EX 223 at 61 [EX N to the Declaration]. Also Fredric wrote opposing counsel that he would not turn over the alleged wiretap tapes for testing by Defendants' expert "because of the certainty that Sassan and Mary will record over or delete the contents of the tapes." EX 223 at 64 [EX O to the Declaration].

144. Judge Zilly's order also released a lis pendens filed by Cyrus in May 2005, and it held Fredric, Cyrus and Viveca "liable for excessive costs in this litigation pursuant to 28 U.S.C." Defendants were ordered to submit a motion quantifying their § 1927 attorney's fees.

145. Defendants provided the required documentation as to their attorney's fees. On November 4, 2005, Judge Zilly ordered Fredric, Viveca and Cyrus to pay $273,437 in attorney's fees to Defendants citing 28 U.S.C. § 1927, which provides as follows:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

EX 261 (November 4,.2005 Amended Order).

146. On March 21, 2007, Judge Zilly awarded McCullough $14,041.50 in attorney's fees against Fredric, Cyrus, Viveca and Daria based on their meritless ERISA claims that included McCullough as a defendant. EX 272A.

147. Judge Zilly found Fredric did not have standing to sue on the ERISA claims. Even Viveca lacked standing "because the plans were validly terminated before Sassan and Viveca were separated. ...The positions taken by Plaintiffs with regard to their ERISA claims were inventive, but wholly lacking in merit." EX 272A at 5, 6. Judge Zilly also wrote:

> Plaintiffs' purpose in bringing the ERISA claims in this Court was to prolong the state court divorce proceedings in a different forum, and to punish and harass Ms. McCullough for her assistance of Defendant Sassan Sanai. Plaintiffs' brought the ERISA claims in bad faith, without any reasonable basis in law or fact. ...Moreover, the Court finds that Plaintiffs' actions were solely for their own personal benefit.

EX 272A at 6.

148. Only Defendants counterclaims remain before Judge Zilly.

149. When the Ninth Circuit decided the many pending appeals with its August 17, 2005 Memorandum Opinion, it noted: "On remand, the district court is urged to carefully examine its

subject matter jurisdiction in this case." EX 256 at 2. In a November 1, 2005 Minute Order, Judge Zilly performed the required analysis and decided to retain jurisdiction. "Finally, as a matter of comity, it would be inappropriate to inflict this case on any state court at this late date." EX 258 at 2.

150. The 2004 Federal Wiretap Case. On July 19, 2004, just ten days after Judge Zilly denied Plaintiffs Motion for Leave to file a Fourth Amended Complaint in the consolidated federal wiretap case, EX 191 (Docket in 02-02165 at sub-number 501), Fredric, Viveca and Cyrus sued Sassan, Sullivan, MMPSM, McCullough, Maxeiner and "Does 1-10" in the United States District Court for the Western District of Washington at Seattle under Case No. 04-01594. The case was assigned to Judge Zilly. EX 282 (Docket).

151. In the complaint's first two causes of action, Fredric repeated the defamation allegations against Sassan, Sullivan and MMPSM. Plaintiffs third cause of action alleged ERISA claims against Sassan, McCullough, Sullivan, MMPSM and Does 1-2. EX 283 (Complaint), EX 284 (Amended Complaint).

152. On July 27, 2004, the Court issued an Order to Show Cause, requiring Plaintiffs to:

> show cause why the Court should not dismiss the claims previously dealt with by the Court in C01-2165Z, impose sanctions against the Plaintiffs for filing a new complaint re-alleging claims previously dismissed in C02-2165Z, and stay the newly asserted claims in this case.

EX 282 (Docket at 3, Minute Entry). Plaintiffs responded.

153. On October 8, 2004, Judge Zilly dismissed with prejudice the first two causes of action for defamation as "substantially identical" to the ninth and tenth causes of action in the Third Amended Complaint in 02-2165Z, which Judge Zilly had dismissed on November 3, 2003:

See EX 221 (Order in 02-2165Z).

154. Finding the third cause of action "nearly identical" to the claim filed in the earlier case, which Judge Zilly had dismissed on summary judgment, and finding "no basis" for the claim, Judge Zilly dismissed the ERISA claim with prejudice. EXs 285, 286 (Minute Order, Order).

155. In imposing sanctions under FRCP 11 of $5,000 each against Fredric, Viveca and Cyrus, Judge Zilly found:

- Plaintiffs' first three causes of action are frivolously asserted. They have been dismissed with prejudice by this Court in C02-2165Z.
- Plaintiffs' discussion of the necessity for bringing these claims is not supported by relevant precedent, nor do plaintiffs cite any authority for their position.
- Plaintiffs conduct before this Court has been abusive and outrageous.
- [P]laintiffs continued conduct before this Court has been burdensome, improper, and disrespectful.

EX 286 (Order at 5-6).

156. The Order provided that the case would be dismissed if Fredric, Viveca and Cyrus failed to pay the sanctions into the court registry within 20 days. It also stayed further proceedings pending the final disposition of 02-2165.

157. Plaintiffs appealed the October 8, 2004 Order to the Ninth Circuit, which assigned Case No. 04-35881. They lost. EX 290 (August 17, 2005 Memorandum opinion. "Rule 11 sanction orders are not generally appealable." (citations omitted)).

158. Fredric acted intentionally and caused actual serious harm when he knowingly and

willfully disobeyed Judge Zilly's May 15, 2003 order by signing and/or filing additional lis pendens notices against the property ordered sold in the dissolution decree. Judge Zilly held Fredric in contempt of court, and I find his conduct was contemptuous and violated practice norms.

159. Fredric acted intentionally and caused actual serious harm to Sassan, Sullivan and MMPSM by filing and refiling defamation claims against Sassan, Sullivan and MMPSM based on Sassan's and Sullivan's grievances to the Association despite a court rule specifically prohibiting such suits and despite a letter from the Association specifically advising him of the relevant court rule. His actions violated practice norms. Especially in view of what Judge Zilly characterized as the "WSBA communications privilege," the defamation claims based on grievances to the Association were frivolous and brought to embarrass or burden Sassan, Sullivan and MMPSM.

160. Fredric acted intentionally and caused actual or potential serious harm when he issued the Redmond General Insurance Agency subpoena and when he failed to provide notice to the defendants until after the insurer had already provided the subpoenaed documents. His conduct violated FRCP 45 and violated practice norms. Only one year earlier, Magistrate Justice Theiler had ordered Fredric not to issue additional subpoenas for financial records without prior court approval and had described his earlier request for McCullough's information as calculated to invade McCullough's privacy.

161. Fredric acted intentionally and caused actual serious harm by filing similar claims multiple times in state and federal court thus delaying resolution of the claims and burdening the defendants. While serving as Ingrid's lawyer, I find he issued subpoenas to harass and burden

McCullough and Sassan. I further find that he delayed the federal wiretap proceedings by failing to appear for scheduled depositions and otherwise refusing to provide discovery and that repeated requests for similar relief delayed the proceedings, burdened the courts and the defendants, and violated practice norms.

FACTS REGARDING PARTITION ACTION

162. On May 20, 2003, Fredric filed a new state court proceeding in King County Superior Court under Cause No. 03-2-25718-4SEA. He represented Viveca in her suit against Sassan and IMC, styled as a Complaint for (1) Partition of Community Property and Equitable Readjusment [sic] of Interests in Community Property and Quiet Title; (2) Breach of Fiduciary Duty; (3) Restitution and Quiet Title; (4) Dissolution and Appointment of a Receiver of IMC. EX 145. Fredric filed the partition action two weeks after Supreme Court Commissioner Crooks refused to stay post dissolution orders and five days after Judge Zilly ordered the release of lis pendens filed based on the federal wiretap case.

163. Among other things, the prayed for relief included "an order awarding to Viveca all of Sassan's right title and interest in the house and vacant lot and quieting title in favor of Viveca..." EX 145.

164. In an Ex Parte Motion to Permit Deposition Pursuant to CR 30(a) that Fredric signed on July 7, 2003, he admitted that "[t]his partition action is an extension of the divorce between Sassan Sanai and Viveca Sanai." EX 146 2. He had not provided notice to his father's lawyer, Sullivan.

165. King County Court Commissioner Prochnau telephoned Sullivan, who explained that he had not been served or otherwise notified of the deposition request. EX 147 (Minute

Entry), EX 148 (Transcript of July 9, 2003 audiotaped hearing).

166. In the spring of 2003, nearly one year after their initial offer, the Neimis abandoned the vacant lot purchase. EX 120 at 32. Maxeiner relisted the lot and soon had another full price offer. That deal was scheduled to close July 18, 2003, but it did not because of the lis pendens signed and filed by Fredric based on the partition case. EX 150 (Sullivan Declaration at ¶¶39-44).

167. Fredric signed such lis pendens notices on May 20, 2003 (recorded May 20, 2003 under Auditor's No. 200305200939 for the lot) and July 1, 2003 (recorded July 7, 2003 under Auditor's No. 200307070618 for the house and under Auditor's No. 200307070619 as an amended notice for the lot). EX 2 at 156, 162 and 166.

168. Sullivan had moved to strike the lis pendens and for contempt sanctions before both Judge Thibodeau in the dissolution case and before Judge Zilly in the consolidated federal wiretap case. See EX 150 (Sullivan Declaration ¶45).

169. Following a September 12, 2003 hearing, King County Superior Court Judge Robert H. Alsdorf made findings and transferred the case to Snohomish County reserving to that court any determination regarding whether "this King County proceeding is indeed a separate action or is simply an attempt to forum-shop and pursue the same claims in yet another jurisdiction." It also deferred to Snohomish County the sanctions issue. EX 154 at 3.

170. The order continued: "there is no reason in law or equity or judicial economy that justifies the expense of this Court re-litigating issues already decided and apparently also currently being addressed in Snohomish County." Id. at 2-3.

171. The court rejected Fredric's request for a continuance to conduct discovery because

it found no reason to delay a decision to end "what appears on its face to be unduly litigious, repetitive and even harassing litigation when the relevant facts either are, or should have been, fully discovered prior to this date, and the self-serving allegations of chicanery currently asserted in favor of delay appear only to duplicate charges previously made unsuccessfully by plaintiff." Id. at 4.

172. Given Fredric's comment at oral argument that if the court transferred the case to Snohomish County he would be "forced" to refile it in King County, the Court, on its own motion enjoined Fredric and Viveca from any such action unless certain conditions could be met. Id. at 4-5.

173. The Snohomish County Superior Court assigned the transferred case No. 03-2-10983-3. In October 2003, Sassan renewed his motions to dismiss and for sanctions. See EX 155 (Docket at 3, 4).

174. On December 16, 2003, Judge Thomas J. Wynne signed an order that dismissed the case and imposed sanctions against Fredric and Viveca.

175. Among other things, Judge Wynne found as follows:

- The pending action merely continued the dissolution proceedings.
- "[T]he filing of this action in King County constituted a blatant attempt to forum shop."
- Fredric and Viveca made inconsistent statements to various courts with "substantial dissembling."
- "This court finds this action to be wholly frivolous."

EX 159 (Order on Defendants' Motion to Dismiss and Motion for Sanctions).

176. The Order included a judgment for sanctions for reasonable attorney's fees and costs totaling $13,071.22 entered against Fredric and Viveca jointly and severally.

177. The Court entered judgment against Fredric and Vivcca, jointly and severally, for $2,500 in favor of the Snohomish County Superior Court "to sanction them for their forum shopping and misrepresentation to the courts and to compensate the court for the waste of judicial resources this action has caused." Id. at 6.

178. Fredric filed a Notice of Appeal.

179. The judgment received Snohomish County Superior Cause No. 04-9-01769-0. In June 2005, Fredric and Viveca satisfied the judgments. EXs 160, 161.

180. On January 23, 2006, Fredric and Viveca lost the appeal of the partition case, which the Court of Appeals had assigned No. 53611-7-I.

181. In a per curiam unpublished opinion, the Court upheld the change of venue to Snohomish County, the dismissal of the action, and the award of attorney fees to Sassan. Citing res judicata, the court agreed with Sassan that the partition action "raised only claims that were rejected in earlier litigation or were derivative of previous claims and should have been litigated then." EX 165 at 3 (Fredric and Viveca Sanai, Appellants v. Sassan Sanai and IMC, 131 Wash. App. 1014, 2006 WL 158657 (Wn. App. Div. I, 2006) (unpublished opinion).

182. The Court of Appeals rejected the claim that venue was proper in King County. The Court held that the section of the Business Corporation Act Fredric relied upon, RCW 23B.14.300 (judicial dissolution –grounds) is not jurisdictional, and that Fredric had not alleged one of the statutory basis for judicial dissolution of Sassan's professional services corporation. See EX 165 at 1-2 (131 Wash. App. at fn. 3).

183. The Court also concluded that the challenge to the award of sanctions was "without merit." Noting the trial court's finding that the partition action was "a blatant attempt to forum shop," the Court held the trial court properly imposed sanctions under CR 11 and RCW 4.84.185.

184. The Court agreed with Sassan that the appeal was frivolous, brought solely for purposes of delay and demonstrated Viveca's continued intransigence. EX 165 at 3. "Fees are warranted on both grounds." Id.

185. I find that Fredric acted intentionally and caused actual serious harm by filing the partition action and by using it as the basis for additional lis pendens filings against the property ordered sold under his parents' dissolution decree. The partition action was frivolous. I find that it sought to relitigate claims that were or should have been brought in the dissolution case, and that Fredric used the partition case to sign and/or file lis pendens notices in knowing and willful disobedience of Judge Thibodeau's and Judge Zilly's orders forbidding any further lis pendens or other action to delay the real estate sales. The resulting delay harmed not only Sassan and the prospective purchasers, but also burdened the courts and resulted in contempt findings and sanctions against Viveca in both state and federal court and against Fredric in federal court.

FACTS REGARDING UNFITNESS TO PRACTICE

186. I find that throughout the proceedings described above, Fredric violated court rules and court orders, and persisted in burdening and delaying his opponents and the courts despite courts finding his pleadings, motions and appeals frivolous and imposing sanctions against him and his client for his litigation tactics. I find that he acted intentionally and caused actual serious harm in filing multiple motions and complaints seeking similar relief, and when he did not receive the requested relief, he refiled the motion or complaint in another court.

187. Fredric tried to relitigate his state court disqualification by filing suit in federal court against the judicial officers who ruled against him. He tried to relitigate the Snohomish County dissolution decree by filing a King County partition action. He filed and refiled the wiretap claims in multiple forums. He filed and refiled the defamation claims despite a court rule and express warning about the "WSBA communications privilege."

188. I find his actions burdened not only his father and the court system, but also third parties such as the Neimis and Mary McCullough. I further find that he ignored service requirements for tactical advantage, employed abusive litigation tactics for more than four years and even after significant sanctions were imposed on him or his client, and frivolously asserted claims without factual or legal support. I find that his pervasive pattern of misconduct demonstrates an inability or unwillingness to comply with the law and demonstrates his unfitness to practice.

189. As to all counts, I find that Fredric acted intentionally.

190. As to all counts, I find that Fredric caused actual serious injury or potentially serious injury.

191. As to all counts, I find that Fredric acted with the intent to benefit himself as a party, to benefit Viveca and Ingrid while he served as their lawyer, and to benefit his other co-plaintiffs. Specifically, for Viveca he attempted to upset or delay implementation of the dissolution decree. For himself, he sought millions in damages and thousands in fees, including, after only one day as Viveca's lawyer in the dissolution case, moving for $20,000 in fees. EXs 17, 67 at 2. He estimated he could have earned $60,000 representing his mother if Sassan and others had not "injured the business expectancies of Fredric." EX 211 at 22.

AGGRAVATING AND MITIGATING FACTORS

192. As to all counts, I find no mitigating factors.

193. As to all counts, I find the following aggravating factors applicable:

(a) prior disciplinary offense (2002 Oregon admonition, EX 298);
(b) dishonest or selfish motive;
(c) a pattern of misconduct;
(d) multiple offenses; and
(g) refusal to acknowledge wrongful nature of conduct.

CONCLUSIONS OF LAW

Violations Analysis

The Hearing Officer finds that the Association proved the following:

194. Count 1. The Association proved Count 1 by a clear preponderance of the evidence. Respondent violated RPC 3.1 (frivolous filings) RPC 3.2 (delaying litigation), RPC 4.4(embarrass, delay or burden a third person) and RPC 8.4(d) (conduct prejudicial to the administration of justice) by filing multiple, meritless post-dissolution motions and other requests for relief in the trial and appellate courts.

195. Count 2. The Association proved Count 2 by a clear preponderance of the evidence. Respondent violated RPC 3.4(c) (knowingly disobey an obligation under the rules of a tribunal), RPC 8.4(j) (willfully disobey a court order), RPC 4.4 (embarrass or burden a third person), RPC 8.4(d) (conduct prejudicial to the administration of justice) and RPC 8.4(a) (violate or attempt to violate the RPC, knowingly assist or induce another to do so , or do so through the acts of another) by filing and preparing lis pendens notices to cloud title to real property ordered sold under his parents' dissolution decree, filing additional litigation used as a basis for filing

additional lis pendens notices and by otherwise attempting to delay or impede the sale of property ordered sold under the dissolution decree.

196. Count 3. The Association proved Count 3 by a clear preponderance of the evidence. Respondent violated RPC 3.1 (frivolous claims), RPC 4.4 (embarrass or burden a third person) and RPC 8.4(d) (conduct prejudicial to the administration of justice) by suing the judges and the court commissioner who denied his post-dissolution motions.

197. Count 4. The Association proved Count 4 by a clear preponderance of the evidence. Respondent violated RPC 8.4(j), RPC 3.4(c) and RPC 8.4(d) by signing and filing lis pendens notices in violation of the May 15, 2003 federal court order.

198. Count 5. The Association proved Count 5 by a clear preponderance of the evidence. Respondent violated RPC 3.1, RPC 8.4(*l*), RPC 4.4 and RPC 8.4(d) by filing defamation actions against Sassan, Sullivan and MMPSM in state and federal court based on communications to the Association, while ELC 2.12(b) or its predecessor RLD 12.11(b) provided that communications to the Association are privileged and "no lawsuit predicated thereon may be instituted against any grievant."

199. Count 6. The Association proved Count 6 by a clear preponderance of the evidence. Respondent violated RPC 3.4(c) and RPC 8.4(d) by failing to serve other parties to the action with copies of his subpoena for records from Redmond General Insurance Agency. This repeated misconduct that had resulted in an order one year earlier requiring him to withdraw improper financial subpoenas

200. Count 7. The Association proved Count 7 by a clear preponderance of the evidence. Respondent violated RPC 3.2, RPC 4.4 and RPC 8.4(d) by filing similar claims multiple times

and in multiple jurisdictions, making multiple requests for similar relief, failing to appear for deposition and by otherwise prolonging the proceedings.

201. Count 8. The Association proved Count 8 by a clear preponderance of the evidence. Respondent violated RPC 3.1, RPC 3.2, RPC 3.4(c) and RPC 8.4(j) by filing an action and appeal seeking to relitigate the dissolution decree property distribution and by using the partition action as the basis for yet another lis pendens filing clouding title to the real property ordered sold under the decree.

202. Count 9. The Association proved Count 9 by a clear preponderance of the evidence. Respondent violated RPC 8.4(n) by repeatedly violating court orders or rules, repeatedly filing pleadings, motions, appeals or other papers without merit, filing similar claims in multiple forums, otherwise delaying enforcement of his parent's dissolution decree and by forcing his father to defend in multiple courts on multiple grounds.

Sanction Analysis

203. A presumptive sanction must be determined for each ethical violation. In re Anschell, 149 Wn.2d 484, 501, 69 P.2d 844 (2003). The following standards of the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) are presumptively applicable in this case:

> 6.2 *Abuse of the Legal Process*
>
> 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
>
> 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential

interference with a legal proceeding.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

7.0 *Violations of Duties Owed as a Professional*

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

Standard 6.2 applies to the RPC 3.1, 3.2, 3.4 and 4.4 violations. Standard 7.0 applies to the RPC 8.4(a) (d) (j) (l) and (n) violations.

204. When multiple ethical violations are found, the "ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

205. Based on the Findings of Fact and Conclusions of Law and application of the ABA Standards, the appropriate presumptive sanction is disbarment as to each count of the Amended

Formal Complaint.

206. Because I find no mitigating factors under Standard 9.32 of the ABA Standards and several aggravating factors under Standard 9.22, I find no reason to depart from the presumptive sanction of disbarment for each count.

Recommendation

207. Based on the ABA Standards and the applicable aggravating and mitigating factors, the Hearing Officer recommends that Respondent Fredric Sanai be disbarred. Reinstatement should be conditioned on payment of any outstanding sanctions.

Dated this 18th day of July, 2007.

Joseph M. Mano, Jr., Bar No. 5728
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the ~~FFCL of~~ HO's Recommendation to be delivered to the Office of Disciplinary Counsel and to be mailed to Fredrick Sanai, Respondent/~~Respondent's Counsel~~ at 535 NE Shift Rd Lot 8 Mcminnville, OR 97128 by ~~Certified~~/first class mail, postage prepaid on the 19 day of July, 2007.

Sent to Confidential Home Address and

Clerk/~~Counsel~~ to the Disciplinary Board

APPENDIX B

FILED

JAN 25 2008

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re **FREDERIC SANAI,** Lawyer (WSBA No. 32347).	Proceeding No. 04#00044 DISCIPLINARY BOARD ORDER ADOPTING HEARING OFFICER'S DECISION

This matter came before the Disciplinary Board at its November 30, 2007 meeting on automatic review of Hearing Officer's decision recommending disbarment following a hearing.

Having reviewed the documents designated by the parties, the briefs and the applicable case law and rules, and having heard oral argument:

IT IS HEREBY ORDERED THAT the Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation are approved.[1]

[1] The vote on this matter was unanimous. Those voting were Andrews, Carlson, Cena, Coppinger, Darst, Fine, Kuznetz, Madden, Meehan, Meyers, Montez and Urena.

ORIGINAL

WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Avenue – Suite 600
Seattle, WA 98101-2539
(206) 733-5926

150

Dated this 25th day of January, 2008.

William Carlson, Vice Chair
Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Order Adopting HO's Decision to be delivered to the Office of Disciplinary Counsel and to be mailed to Frederick Sanai, Respondent/~~Respondent's~~ Counsel at 535 NE 5th St. Rm 101 e McMinnville OR 97128 by Certified/first class mail, postage prepaid on the 25 day of January, 2008

Home Address

Clerk/Counsel to the Disciplinary Board

WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Avenue – Suite 600
Seattle, WA 98101-2539
(206) 733-5926

APPENDIX C

APPENDIX C

WASHINGTON'S RULES OF PROFESSIONAL CONDUCT
(As of October 1, 2004)

RPC 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RPC 3.2 EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

RPC 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

(**c**) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

RPC 4.4 RESPECT FOR RIGHTS OF THIRD PERSON

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

RPC 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(**d**) engage in conduct that is prejudicial to the administration of justice;

(**j**) Willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(*l*) Violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;

(**n**) Engage in conduct demonstrating unfitness to practice law.

APPENDIX D

APPENDIX D

AMERICAN BAR ASSOCIATION
STANDARDS FOR IMPOSING LAWYER SANCTIONS
(1991 ed. & Feb. 1992 Supp.)

6.2 ***Abuse of the Legal Process***

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

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